



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PUBLIC ACCOUNTS

(Reference: [Review of Auditor-General's Report No 7 of 2016: Certain Land Development Agency Acquisitions](#))

Members:

MRS V DUNNE (Chair)
MR M PETERSSON (Deputy Chair)
MS B CODY
MR A COE

TRANSCRIPT OF EVIDENCE

CANBERRA

FRIDAY, 13 OCTOBER 2017

Secretary to the committee:
Dr B Lloyd (Ph: 620 50137)

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

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Amended 20 May 2013

The committee met at 9.00 am.

POTTS, MR GRAHAM, Director, Glebe Park Pty Ltd

THE CHAIR: Good morning and welcome to our third public hearing of the Standing Committee on Public Accounts inquiry into the Auditor-General's report *Certain Land Development Agency Acquisitions*. Appearing today will be Mr Graham Potts, Director of Glebe Park Pty Ltd; Mr Jim Seears, the former owner of Lake Burley Griffin Boat Hire; Mr Richard Swinbourne of Capital Valuers; Ms Narelle Byrne, Opteon Property Group; and Mr Timothy Heaton, formerly of MMJ Valuers.

I welcome Mr Graham Potts to the table. I draw your attention, Mr Potts, to the pink privilege statement. I ask you to assure the committee that you understand and are familiar with, the terms of the privilege statement?

Mr Potts: I understand it, yes.

THE CHAIR: Do you wish to make an opening statement?

Mr Potts: No.

THE CHAIR: Thank you. At the end of the proceedings if there is anything you feel we have not covered, feel free to make a statement at that stage if you wish. I suppose the committee is interested in your perception of the issues that relate to the sale of block 24 section 65, city—the land adjacent to Glebe Park—as you were one of a group of people who were the owners of that block before—

Mr Potts: Correct.

THE CHAIR: it was sold back to the ACT government. Could you outline for the committee what you see as the chain of events that led to the sale of the block back to the government by your organisation?

Mr Potts: Yes. Quite simply, just going back in no set order—you have most probably heard it all before—coming from me, understand that on a day-to-day operational basis I have a general manager, Phil O'Brien, who had the appointment with Tim Xirakis. That was the first that was brought forward to me. Tim Xirakis had a meeting with Phil O'Brien and wanted to talk about the actual sale or the purchase of the block. Phil came to me and told me that at the meeting the government wanted to buy the block.

They then came in at some stage—I have a note here—with a valuation in August 2014. I remember the valuation. I do not remember it clearly because it was nothing that entertained a thought that I wanted to sell. It was from \$950,000 to \$1.5 million. I said to Phil words to the effect of: "Wonder what they went to that trouble for when we do not want to sell? And if we did want to sell, we would not be selling at that sort of price."

That is about all that actually happened. I think Tim said to Phil that we could get a valuation on the block ourselves to assess what it was worth. Phil said to me, "What

do you think?" I said, "Not interested. We are not selling the block. The government have approached us to buy it. If they want to buy it, they can do valuations, do whatever they want. We are going to develop the block," which is what our intention was. We are developers. And then—

THE CHAIR: This was in August 2014?

Mr Potts: Yes.

THE CHAIR: You sort of rejected outright the valuation that was provided by government?

Mr Potts: We did not reject it outright. I mean, they brought a valuation. We did not ask them to bring a valuation. We just said, "We are not interested. Thanks anyway."

THE CHAIR: So what made you interested later on?

Mr Potts: There was an approach to me made by Paul Powderly of Colliers, who asked me would I be interested in going to a meeting with Dan Stewart on the thought of the purchase and sale of the block. I said, "Yes, fine, I will go to the meeting." So I went to the meeting with Dan Stewart on 19 June at Colliers office.

THE CHAIR: 19 June when?

Mr Potts: 2015.

THE CHAIR: 2015.

Mr Potts: 2015. My memory, when I say it is not clear, there were a number of us—there was Dan and I and Phil in the room. I started off or Dan started off by saying they wanted to purchase the block for the city to the lake infrastructure, the relocation of Rond Pond and so on, as we are all familiar with. Dan said, "Would you sell it?" I said, "Well, at a price we could entertain it." I had in my mind what I thought it was worth. I had three other owners of the block, so I had to take their thoughts into account or their understanding of what they might want to do as well. But I thought that if it was a price that I thought was fair and reasonable, I would entertain it.

The meeting went somewhat like this, and it might be out a little. Dan said, "We will offer you \$3 million." I think that was the opening gambit. I said, "No, we are not interested at \$3 million. It is not anywhere near what it is worth." I came back and said, "It is worth something like closer to \$5 million." And he said, "Well, we cannot go to that level." I said, "Well, fine. We do not want to sell. That is not really our problem." He then said, "We might be able to get to three and a half. Would that be closer to your number?" I said, "Well, it is not closer to five." He said, "What would you entertain?" I said, "I do not know." I did not know in the context of this meeting as to where it was going to go to. But if I could get a feeling that I could talk to the other owners about \$4 million then we might be able to go to the next stage.

It was not a long meeting. He said, "I do not think we can get to four." I said, "Well, that is all good." The meeting ended. Dan called me. I think that was Thursday or

Friday. He called me the following day or the day after and said, "The government have come back." He, the government or whoever, had come back at, I think it was at 3.6. I was still at four. I said, "At four million we can do it." He said, "Would you contemplate 3.8?" I said, "Oh, god, we are going around in circles." I think that was my comment to him. With that I said, "Okay, at 3.8 and a quick settlement." They were my exact words, I remember: "And a quick exchange and quick settlement; I will take that offer to the other owners." That was how the telephone call finished up.

Dan called me and I think there were two or three telephone calls in between the 3.6 to the four. I rejected the 3.6 and went to 3.8. As to whether there was one telephone call or two, I do not remember. But Dan called and said that he had got agreement that they would be prepared to purchase for 3.8. Would I accept that? That was where we agreed over the phone that I would accept 3.8, and that was the end of the matter.

THE CHAIR: So roughly when was that phone conversation?

Mr Potts: I have got it that the meeting with Dan was at 11 am, 19 June 2015. I would have thought 20 June. I thought the day after. Something rings a bell or registers that I was at home on a Saturday morning; so I might be out by a day or two, but my memory is normally pretty good. I thought I was at home on a Saturday. It was either a day or two days later.

THE CHAIR: We have heard from Mr Morris as well, but presumably your other shareholders were happy enough with that.

Mr Potts: I contacted them individually and they agreed with me. They obviously asked my advice. I was looking after the development, the site. I said, "It is most probably worth a little bit more," or words to that effect. As a site, it is worth four or five. It is hard to tell as to whether it is 3.8, 4.2 or 4.4. I mean, you go to an auction and if there is someone there a little bit more excited than you, it could be a little bit up or down.

I said that for a quick settlement my advice would be 3.8. I first spoke, I think, to Barry by email, I think. I am not sure whether I made a telephone call or not. Maybe I did; maybe I did not, because we could have been talking about other things and I confirmed it by email. Then I spoke to the other two shareholders and they were in agreement at 3.8 for a quick settlement. So I then called Dan, I would have assumed, confirmed with him that I had agreement from the other owners and then we went—

THE CHAIR: And took it from there. You settled when? What was the date of the settlement?

Mr Potts: Settlement was in September sometime. I could not find a date. I did not check with Clayton Utz, but it was sometime in September. I have just got written down "September 2015 settlement," and it went on for some time. The exchange went backwards and forwards.

THE CHAIR: Did your organisation have set plans for the development of that site or was it just something that you might do in the future?

Mr Potts: We had actually had an architect do a scheme as to what we could put on the site and we had various numbers or various schemes. When you start on a site you can do a mix of one bedrooms, two bedrooms and threes, and it depends on the size and the frontage, the actual depth and width of the units, whether you do from 120 to 150 units. The smaller the units, of course, the more the numbers.

I looked through the archives and could not find too much. There were differing schemes done from 120 to 150-odd units, but we had not got to the stage of doing a preferred mix. But we had done various work on it with Steve Moseley from Guida Moseley Brown, I think they were called at that stage.

THE CHAIR: How long had you had the block and what were the conditions on which you acquired the block?

Mr Potts: On the whole block, Barry could give you a more detailed account. I believe that from 2000 we owned it. We did Glebe Park Residences of 180-odd units, subdivided the site and then the remnant land was the whole of where we were doing the new development plus the land which was left in abeyance—we had not thought about what we were going to do on that—in front of the Crowne Plaza hotel.

THE CHAIR: So you were looking to develop away from the Crowne Plaza, not in the area adjacent to the Crowne Plaza?

Mr Potts: On the south side. On the south side and, correct me if I am wrong, reasonably squarely in front of the casino.

THE CHAIR: Were there any conditions on the land at the time? I understand that, as part of the subdivision, there was to be some landscaping and car parking and the like.

Mr Potts: Yes, I believe so. The team were looking after the conditions on the lease with the landscaping, the car parking and other things they actually had to do on the remnant land, the land we are talking about.

THE CHAIR: But to develop residential accommodation of the sort that you described, that would have required a change to the Territory Plan and a change to the lease?

Mr Potts: Not a change. My understanding was, the same as for Glebe Park Residences, a change to the crown lease. We would have gone down that track and had the understanding that we would have eventually got there. When I say “eventually got there” there would have been objections from all and sundry, as there normally are, but we would have eventually got a favourable outcome. It is not the first time that we have had a change of conditions under the lease, the Territory Plan or whatever.

THE CHAIR: Are you aware that back in 2011 or maybe 2012 the planning minister said that the government had no intention of allowing residential development on that block?

Mr Potts: I heard that when I—

THE CHAIR: June 2011, Mr Corbell, in answer to a question.

Mr Potts: To my knowledge, I do not recall that. I played Barry's evidence that he gave here last Wednesday or whenever it was. That question was asked by you. I thought back and I could not remember that actually being said. But I am not saying it was not, and if it was we would have thought, "Well, he is entitled to his opinion. We have got the block and we will treat it the way we treat it."

MR PETTERSSON: I want to go back to the valuations process. There was a wide range of prices discussed. You eventually settled on the 3.8 for the quick settlement. Was that a good price for you, do you think, or do you think you could have got more money, potentially, if you had bargained a little bit harder?

Mr Potts: Should have got more. Sorry, 3.8 was accepted. You say, "Was it a good price?" We accepted the price, so it was a price which we ultimately thought was fair and reasonable or we would not have accepted it. We—Barry, me and the other two shareholders—had no thought or intent of selling the block until the government approached us. We had not gone to the market to try to sell it. We did not need to sell it. As I said a few moments ago, whether it is worth 3.8, 3.9, 4, 3.6, 3.7 I was really thinking \$4 million was the number. I got convinced that 3.8 with a quick settlement was the right number. So I was most probably thinking that \$4 million was the number, but is it \$4 million, is it 3.9, is it 3.8? It is close enough. Would I have accepted anything less? Not a chance. Sorry, I would not have. If I had put it to the other shareholders I would have recommended to them that it was below the number.

MR PETTERSSON: It was not an act of charity from you, selling it to them? It was a hard fought negotiation and that was the outcome that was reached.

Mr Potts: I would not call it a hard fought negotiation. There were a couple of telephone calls and one meeting. We were a seller at a number. The government wanted to buy. Obviously, they had the appetite; they had the need to buy the block. So that is where it was.

MR PETTERSSON: There is a second thing I want to follow up on. You said that in the face-to-face meeting they said the reason they wanted to purchase this block of land was for the city to the lake project. Have you ever thought there might be another reason that they wanted that block of land?

Mr Potts: I did not care what their reason was.

MR PETTERSSON: They gave you one reason.

Mr Potts: They spoke about whether the government was the purchaser. It would be like if they wanted to buy the block of land. I had no other thoughts as to what they were telling me. I did not think at that stage whether they were telling me the city to the lake was another purpose that they were buying the block for. It never entered my mind.

MS CODY: I notice you were talking about you having a view that \$4 million was a fair price. To me, \$3.8 million is pretty close, with negotiations. That is what happens. Did you get it valued at all?

Mr Potts: No. I think experience has taught me that I know what a block is worth. I had a gut feeling, and that is why I am saying it sounds a little bit rubbery as to whether it is \$3.8 million, \$4 million, \$4.2 million. I have been to auctions where I have paid—

MS CODY: You sometimes pay too much, do you not?

Mr Potts: What happened then? I have always had the firm understanding: go to an auction and do not pay any more than what you tell yourself it is worth. Then you go out and you pay more and you think, “What happened then?” You got a little bit more excited. But that was a number that was about where I thought it should be.

MS CODY: The sale of that block has not prevented you going on to do other things, possibly buying other blocks, doing developments?

Mr Potts: Has not what, sorry?

MS CODY: Has not prevented you doing further development in other forums, buying other blocks of land, doing anything like that?

Mr Potts: No.

THE CHAIR: I want to spend a little time going back to the purposes for the lease in the first place, the lease which you acquired in the early 2000s which was over what had been the former food court et cetera.

Mr Potts: The food court, yes.

THE CHAIR: When you acquired the land it had the lease conditions of the former food court on it. Is that the case or did it have other uses?

Mr Potts: I am sorry; I would assume so.

THE CHAIR: Could you take on notice and perhaps get back to the committee with what the lease terms were?

Mr Potts: You would have that on record.

THE CHAIR: The committee does not. Someone in the government does but—

Mr Potts: Yes, but the government would have all those records. Sorry, that is going back 17 years ago as to whether I would have the records. I am saying you are more likely to have the records than me checking back the lease 17 years ago, with due respect.

THE CHAIR: I am just trying to get an understanding of what you and your company thought the terms of the lease were. In the early 2000s you acquired this lease. There were some lease changes made to allow you to build the Glebe Park Residences.

Mr Potts: Correct.

THE CHAIR: Which was about 2003?

Mr Potts: About 2003. It would have been about 2003.

THE CHAIR: I am going into my corporate memory, but yours is probably better than mine.

Mr Potts: It would have been about 2003.

THE CHAIR: Were the lease changes that you acquired only over the area that was covered by the Glebe Park Residences? You subdivided the block. Did the lease changes only apply to the area covered by the Glebe Park Residences or were there lease changes to the remainder of the block?

Mr Potts: My understanding is that that would have to be the case, yes.

MS CODY: Talking about the lease changes, obviously to do a lease variation change you go through the processes—the development application and all those processes?

Mr Potts: The whole rigmarole of work, yes.

MS CODY: And all those processes were followed?

Mr Potts: Yes, of course; had to be.

THE CHAIR: I am just trying to get my head around the actual history. It may be that we need to go to the planning people on this.

Mr Potts: Sorry, I would not recall back in 2000 or 2001 and 2002, because we did it in roughly 2003, exactly what process was followed, but the normal process would be the lease variation for the block of land, subdivided, and then the other subdivided block, the block that we are talking about, would be treated in its own right and we would have had to have gone through the same process on that block.

THE CHAIR: You would have had to do a lease variation. Would you have also done a variation to the Territory Plan at the time when you built?

Mr Potts: No. Sorry, my understanding is, no, we did not. We did not do a variation to the Territory Plan. It was not required.

MR PETTERSSON: I have a question. I am in no way an expert on the purchasing of property, and I am glad it is on the public record. The Auditor-General's report talks about—and we have heard witness testimony to this—your legal representatives

forwarding a contract of sale to the ACT government, to the LDA, for them to execute. Is it normal practice for the seller to be drawing up the contract for sale and forwarding it or does it normally come from the buyer's side to the seller?

Mr Potts: It can be the practice of whoever decides at the time. It is most probably because our solicitor would have had all the details on the block, the lease. It most probably would have been more convenient. Until you said that, I had not recalled that that was the way in which it went. It could go from the purchaser either saying that they will draw up the contract, the purchaser's solicitor or the seller's solicitor. In most or a lot of instances of sales I would have our solicitors do it up because we are more attuned to the details, which would make it easier and quicker for both parties.

MS CODY: And, as you have already stated today, part of what was appealing about the slightly lower amount was that you were looking for a quick settlement. To draw up the documents yourself would help to—

Mr Potts: Correct. I am not contradicting myself. I am not saying I did say this, but more than likely I would say to Dan, "It would be easier for me. I will get Clayton Utz, Alfonso del Rio, to draw up the contract and get it across to you guys to vet and then we can get the show moving." That would have been the conversation that I am sure would have actually happened. So I got on to Alfonso, I think. I know that in an email a couple of days later or earlier that next week, I got to Alfonso, gave him the basic details of the block, the sale price, the purchase price and left him to do the searches to get it across to the government's solicitor.

THE CHAIR: You were paid \$3.8 million. The overall purchase value was \$3.8 million plus GST. Who is liable to pay the GST, the purchaser or the seller?

Mr Potts: The purchaser.

THE CHAIR: Purchaser?

Mr Potts: The purchaser, we pay.

THE CHAIR: Have you heard anything or had any discussions with your neighbours at the casino about their interest in land around Glebe Park? Have you had conversations with your neighbours at the casino?

Mr Potts: No. But to say that they are our neighbours—they are not like our—

THE CHAIR: You do not go over and borrow sugar.

Mr Potts: My understanding is that our neighbours, as you call them, live in Germany. No, I have never spoken to the casino owners or operators about the block.

THE CHAIR: Did you have conversations with the Crowne Plaza about the block? Have you had conversations with the hotel groups about the—

Mr Potts: To my understanding, no. As to whether there was, no, I cannot say. Something tells me that someone thought about it, talked about it to the Crowne Plaza,

when we were exploring the opportunities for what we were going to do on the block of land. If there is something on record that I spoke to, or my general manager spoke to, the Crowne Plaza or their owners about something that might have been amenable to them in that remnant piece, I cannot remember. We were developing the south side and the top north part.

As to whether we spoke to them about that—there are so many things that go through your mind about what we are going to do with that land, how we are going to treat it, whether it is in line with something that could be suitable for the hotel as well. But I cannot recall, no. I am saying that, but there could have been a conversation, something on record. Someone might have come to me and said, “Would you talk to the Crowne Plaza?” We might have said, “Talk to the Crowne Plaza.” We had all sorts of ideas.

Because it is a hard block of land, we thought it was going to be tough enough with the objectors on the southern part—the same as every development in Canberra, Sydney, Australia, the Gold Coast, wherever. But on the northern part, that was going to present what I would have termed real challenges. We thought, “What can we do to keep those challenges at bay?” We had to do something with the block. It was our block. We could not keep it forever and think it was just going to sit there. It had to be maintained and looked after.

MR PETTERSSON: When you own a block of land such as the one in Glebe Park, do people often solicit you, trying to purchase a block like that, or do people just assume that because you own it you have got plans to do something, so no-one ever really bothers to talk to you about it?

Mr Potts: About buying it?

MR PETTERSSON: Yes.

Mr Potts: People will randomly just come out of the woodwork and approach you to buy a block. But understand that Amalgamated Property Group have always developed blocks. This is most probably one of the few times that we have ever sold a block of land. If we have gone and purchased a block of land our intent is to develop the land to its fullest with whatever we can do on it.

MR PETTERSSON: I understand the nature of the work that you do. Canberra is a small place. People know that about your organisation. I take it that it is somewhat uncommon for someone to come to you and attempt to buy a block.

Mr Potts: Correct, 100 per cent.

MR PETTERSSON: So you would remember most of the times it would happen?

Mr Potts: Yes.

MR PETTERSSON: So you would remember if the casino had approached you wanting to purchase this land or have conversations with you about this land?

Mr Potts: Yes.

THE CHAIR: Is there any other—

Mr Potts: As to whether the casino—and I am not sure where you are going with that—approached others to approach us to get our thoughts on what we wanted to do with the land, I have no idea of the intention of other people. There are always people with agendas and if there is someone on record saying that they asked someone else, “Can you ask Graham Potts whether he is interested in selling?” who is he? Where does he come from? He is acting for someone just talking to the casino. I have got enough on my mind without worrying about that.

THE CHAIR: Were you surprised when Mr Powderly contacted you to set up the meeting with the LDA, with Dan Stewart?

Mr Potts: No.

THE CHAIR: Why were you not? You have just said—

Mr Potts: You want me to be surprised.

THE CHAIR: No; you just said it was unusual for people to approach you to purchase a block of land—and you know you have not had conversations with the casino because they are not really your neighbours—but you were not surprised when Mr Powderly suggested that you might have a conversation with Dan Stewart.

Mr Potts: Paul called me and said Dan Stewart—that he knows—wanted to have a meeting and would I—I am not sure. When I say I was not surprised, I just took it in my stride that he wanted to have a meeting. Paul said, “Will you have a meeting with Dan Stewart?” and I said, “No problems.” I would not put Paul in the category; Paul is in the business of doing what he does. I would not be surprised in other people, I was suggesting.

THE CHAIR: So you had owned this block of land since the early 2000s and you had got to 2014 and you had done some work on scoping out 120, 150 units for part of the block. When did you do that work?

Mr Potts: When?

THE CHAIR: Yes.

Mr Potts: To be honest, I cannot remember. It would have been 2012 or 2013. We would have been looking, when we finished Glebe Park Residences, as to what we would do with the next site. Settled all the units and thinking, “Now I’ve got this block. How do we deal with it?” So it would have been done over a period of a year or two, just understanding as to how—

THE CHAIR: But you did not go ahead with that. You had some conceptual plans, but you had not got down to scoping the mix of—

Mr Potts: No, we had not decided what we thought the market wanted or where we were going to take it. No, we had just done some conceptual plans. We quite often do that. I have got blocks of land that I have owned for years that I think, “When will I deal with it? When will the market be okay?” And I cannot remember what my thinking was as to the market acceptability of the product being not right or was not at the time or whenever.

THE CHAIR: Were you doing other work at the time?

Mr Potts: Yes.

THE CHAIR: In Canberra?

Mr Potts: Yes.

THE CHAIR: I am just trying to get a feel for how urgently you felt that you needed to act on this.

Mr Potts: It was not urgent; it was just a block of land that we owned along with other blocks of land. If you asked me today, we have got most probably five or six sites that we are dealing with in Canberra at various stages of construction or completion or planning or just blocks of land that I have owned and am just looking at what we are going to do, when we are going to do it. Developing is not an exact science; it is about trying to get the timing as correct as you can for the marketability, for the market acceptance. So we try to get it right. As I said, it is not easy.

MR COE: With regard to when the block was subdivided, the subdivision also included the million-dollar landscaping works. I apologise if this has already been asked, but did you spend a million dollars?

Mr Potts: My understanding is that, if we had an obligation under the lease, we did what we actually had to do.

MR COE: Right, so does it mean—

Mr Potts: So you would have records, the same as we had, as to what we had done and so on. Sorry, I have not—

MR COE: But if there was a responsibility to spend a million dollars on landscaping, does that suggest that the government’s intention was that it would be a landscaped area rather than a building?

Mr Potts: Rather than a what?

MR COE: A structure of some sort.

Mr Potts: Obviously.

MR COE: In which case, if the government—

Mr Potts: Landscaping and car parking and—

MR COE: That is right, yes. So, as has been confirmed by Simon Corbell on a couple of occasions, if the government was firmly of the view that it should be a landscaped area and that the lessee should spend a million dollars on landscaping, why do you think the government purchased it with, in effect, a value based on it being a development—122 apartments—as opposed to it being a park?

Mr Potts: Sorry, Alistair, I have no idea what the government was thinking. I cannot tell you what they were thinking or what was in their mind. We had our obligation under the lease. We had a purchaser, which was called the government, come to us to buy the block of land and we agreed to a price and sold the block.

MR COE: Did the government in effect threaten you that they could do a compulsory acquisition?

Mr Potts: No. There was a conversation or someone said that that was something that could actually happen because it was an infrastructure relocation of Rond Pond. Someone verbally said that and I do not know who mentioned that. I think someone—it might have been Phil or Barry—mentioned to me, “What would your thoughts be?” and I said, “Well, I mean, the price will be what it is worth anyway, so bring it on.” Compulsory acquisition or purchase, it will all go down the same track and end up where—so I never thought too much about it, Alistair.

MR COE: It does not necessarily need to have, but did it ever occur to you why the government was so desperate to buy it? The idea of the government being desperate to buy it for stormwater retention seems a little bogus to me. And the fact that there has been no progress on that site since also adds some weight to that argument. Again, you are the seller; you want to get top price, and I understand that.

Mr Potts: Nearly top price; we discussed that while you were out.

MR COE: Yes. I actually did hear that. But you want to get a fair and reasonable price, as you said. I do not begrudge you trying to negotiate the best price for you. But, in retrospect, do you think that the government’s motivation was stormwater retention?

Mr Potts: Alistair, I have no idea where you are going to with that. I don’t know, don’t care. I am the seller of a block of land; I do not look, in retrospect, when I sell a unit to see if I could have got \$100,000 more because the price has gone up or down or people did not sell it or they do not move. I am serious; I have not even a thought.

MR COE: The reason it is important is that if you know that the buyer is desperate that puts the ball in the seller’s court.

Mr Potts: I did not think they were desperate; they were someone who approached me and there was what I call argy-bargy on the price. It went from \$3 million to \$4 million to \$3.8 million in a series of calls. I would not have called anything that was done as evidence of desperation. If there was desperation I would have sensed that and we might have got \$4 million or a little bit more.

MS CODY: 4.2.

Mr Potts: Well, whatever.

MR COE: Well, given that the only valuation they had was a million dollars, from a government point of view—

Mr Potts: They could have had 10 valuations; I did not care what valuations they had. I did not have to sell the block of land. I owned a block of land and I had my rights to the block of land to develop or to sell it, and I decided to sell it. Everyone keeps talking about this valuation of a million dollars. Whether the valuation was \$200,000 or \$10 million, it is all irrelevant. It is like on one of your homes. The government go and value your home and say, “I want to buy it,” and they put a value on it and ask you, “Do you want to sell it?” Well, they came to us with a valuation for a million dollars and said, “We want to buy it.” Everyone is focusing on the million dollars. It was just a number and it did not represent anything because we did not want to sell it for a million dollars.

MR COE: The difference is that if you know the government wants to buy it and you know the government has the pockets that it does, that puts the ball in the seller’s court, surely.

MS CODY: Sorry, Mr Potts, but would that be the case with anyone buying and selling?

Mr Potts: Yes. Respectfully to the ACT government, there are people that I have dealt with before with a lot of money as well. But, as to the desperation, because it was a government did not mean anything more than that they were just another buyer who was interested in something that we actually had and agreed to sell.

MR COE: Have you ever sold a block to the government before?

Mr Potts: No, not to my recollection.

MR COE: Do you know whether you have ever sold a block to another government interstate or a local council?

Mr Potts: No. I might be corrected on that, but I cannot recall any.

MR COE: It has been put to me—and the person who mentioned this to me cannot really substantiate it—that there are geological issues with that whole area. Did you come across any geological issues when you were constructing the Glebe residences?

Mr Potts: No, not to my knowledge. If it was something that was pretty bad or pretty major it would be a pressure of mine, so there could not have been anything of a substantial nature that rings a bell.

MR COE: I have just heard that Glebe Park and some of the adjacent area has some limestone cavities that make it quite challenging.

Mr Potts: Yes, I thought the excavation of car parking and the construction went pretty well to plan, without any real hitches. I recall a site that we have just done at Woden, called Trilogy, and we struck some rock there. I am not physically on the construction site, but when things go behind program time-wise it comes to my notice. We struck rock out there, and then we just got through the rock and then there was a blessed watertable underneath, so those sorts of things. But nothing came up that I recall at Glebe Park Residences.

MR COE: In terms of the actual block in question, you are not aware of any limestone cavities or any other geological issues?

Mr Potts: Sorry, the said block we are talking about?

MR COE: Now talking about that block, yes.

Mr Potts: The sale block?

MR COE: Yes.

Mr Potts: No.

MR COE: Are you aware of any limestone cavities or any other geological issues there?

Mr Potts: I do not think we would have even done any geological testing on it. I cannot imagine why we would have.

MS CODY: Mr Potts, you said earlier that you had conceptually thought about the possibility of putting on 120 units, maybe 150 units.

Mr Potts: Yes; correct.

MS CODY: You had never got to the point where plans were drawn up or designs were made; that is correct, is it?

Mr Potts: Yes, we had an architect do, I would say, some schematics and blocking and stacking and different—

MS CODY: But if you were getting serious and ready to build, you might then think about doing geological testing.

Mr Potts: Oh, yes.

MS ORR: But if you were at the conceptual stage—

Mr Potts: Yes; correct. We would know where the car park entrances were and the depth of the car park—whether it would be one level of car park or two—and various things like that, such as the common areas, the landscaped areas, and how we would need to treat them. So that would be in the chain of command of things that we would

do.

MS CODY: That is right, but you did not really get to that point, did you?

Mr Potts: We would not have got to that stage, no.

MS CODY: No.

MR COE: I am surprised that you would not have developed that block then. It is a prime block right next to the park. Surely it would be very appealing for people to live there. In the meantime, you have done numerous other developments.

Mr Potts: In hindsight, Alistair, that is most probably a fair comment. It would have been good to develop. We decided to sell and we sold. If we had developed, we would have done okay. I mean, yes, I take your point. It would have been another good site. Every site is a good site in its own right. That was a good site.

MR COE: You are obviously a pretty strategic person. You are obviously pretty good at making assessments as to what stacks up or not. I find it hard to believe that you just would have overlooked that you have got this prime site in the city that is very large and it never came on the radar that you perhaps really should develop it. To that end, I wonder whether it is because you knew that the government would not allow you to develop it, which begs the question why the government paid a price which is, in effect, based on a development taking place.

Mr Potts: That is your opinion. I have already answered to Mrs Dunne that we had our rights under the lease and we would have pursued those rights to develop the block. We did the same on Glebe Park Residences. We got an outcome. We believed that the outcome would have been near. As to whether we would have come up against an obstacle or something at the end of the day, we have not in the past. I think we are knowledgeable enough in understanding our rights and the rules that we knew where we stood or we would not have spent the time and effort in doing schematics on different unit mixes and developments for blocks on that site.

MR COE: Did you ever discuss ownership or anything related to your ownership or sale of the block with Andrew Barr or any of the ministers?

Mr Potts: Never. Why would I?

MR COE: I am not sure.

Mr Potts: No. No.

THE CHAIR: Mr Potts, thank you very much for your attendance today. Is there any issue before you leave that needs expanding on or anything that we have not touched on that you believe needs to be touched on?

Mr Potts: No, Mrs Dunne. I think you have attacked it from every angle—a number of times on the same angle.

THE CHAIR: The proof transcript will be sent to you early next week. That gives you an opportunity to go through it and to reflect on it. If you believe that anything needs to be corrected, that is the opportunity to do that. Thank you for your attendance today.

Mr Potts: Thanks very much. Thanks, guys. I hope it has been helpful.

SEARS, MR JIM, former owner, Lake Burley Griffin Boat Hire.

THE CHAIR: We are a little ahead of time, but I think everyone is here.

Mr Sears: I am not in a rush. I am retired.

MS CODY: That must be nice.

Mr Sears: I retired with the nice cheque they gave me from the Land Development Agency, even though it was a bit paltry.

THE CHAIR: The Hansard is recording. Mr Sears, welcome to the third day of hearings into the Auditor-General's report *Certain Land Development Agency Acquisitions*. You have been invited here in your capacity as the former owner of Lake Burley Griffin Boat Hire. There is a pink card in front of you.

Mr Sears: Yes, I have had a look at that.

THE CHAIR: Do you understand the implications of the privilege statement?

Mr Sears: Yes.

THE CHAIR: Do you wish to make a brief opening statement to the committee?

Mr Sears: I do not really know what to say. I was put under a hell of a lot of pressure, I can tell you that. I was quite sick out of the whole episode, and I had my hands out to everyone for a bit of help, especially in here, and I got none from anybody; none from the LDA, none from anybody. I had to do the whole thing myself, battle the whole thing out myself. I was even lucky to get a few bucks out of the LDA to pay the solicitors, who do not come cheap, as you know. They paid everyone else's, but they did not pay mine—anyway.

THE CHAIR: Could you outline for the committee how you came to operate the Lake Burley Griffin Boat Hire business and how long you operated it for? Then we will take it from there?

Mr Sears: I purchased it in 1999.

THE CHAIR: Purchased it from whom?

Mr Sears: From my brother, Pat Sears, in 1999. I was there until I got kicked out in 2015.

THE CHAIR: So your brother owned the lease on the land?

Mr Sears: Yes.

THE CHAIR: Or the licence on the land?

Mr Sears: He had bought the whole business and the lease when he bought the boat

hire.

THE CHAIR: So he bought it as a going concern?

Mr Sears: Yes.

THE CHAIR: He will appear at some stage.

Mr Sears: His son ran it for about three years prior to me taking it over.

THE CHAIR: So he owned it for part of the time and you took over the business.

Mr Sears: Yes, I just bought the business side of it, not the lease, no.

THE CHAIR: Were you aware when you bought the business that by selling you the business, subletting the business to you, that was a problem under the lease and that you needed—

Mr Sears: No, I did not have any idea about that.

THE CHAIR: When did you become aware of that?

Mr Sears: Not until the end, when they were going to throw me out. They told me, “Your lease is no good.” That is the first I knew about it.

THE CHAIR: Okay.

Mr Sears: When I got my lease done, I paid the Auditor-General’s office the stamp duty on the lease. It was stamped with their stamp and I paid the stamp duty, so—

THE CHAIR: The Revenue Office?

Mr Sears: Beg your pardon?

THE CHAIR: It would have been the Revenue Office.

Mr Sears: Yes, the ACT Revenue Office, then; okay. But it had their stamp on it, on the lease that I had done. I paid the stamp duty.

THE CHAIR: You paid stamp duty on the sublease?

Mr Sears: Yes.

THE CHAIR: Can I ask what you purchased the business for in—

Mr Sears: \$90,000 I paid.

THE CHAIR: In 1999?

Mr Sears: Yes.

THE CHAIR: How many boats did you operate and what sorts of boats?

Mr Sears: I had about 40, 45 different types—canoes, paddleboats, kayaks, surf skis, all that sort of stuff. There were about 40 boats there, roughly.

THE CHAIR: And you operated it continuously from 1999 until the LDA bought you out. Was the business a good business?

Mr Sears: Yes, definitely, a very good business, yes. My wife and I, we lived off it for the whole time we were there, put our son through school. Yes, it was a good little business, and we got four months off over winter every year. We worked seven days a week from September until the end of April, every day. We never had a day off, but then we had four months off in the winter time. It was quite a good little business.

THE CHAIR: You essentially closed the business up over winter?

Mr Sears: Yes, it was closed over winter. You could not operate through winter. It was not viable. But we needed a holiday anyway. You would break after doing seven days a week for eight months.

MS CODY: Not a bad operating model.

Mr Sears: Yes, it was good. We got all our weekends off in one go. That was quite good. Yes, it was a terrific little business; it really was.

THE CHAIR: When were you first approached—and by whom—to acquire the business?

Mr Sears: I cannot recall. It would have been 18 months, probably, before it finally happened, when we got kicked out. There were some consultants working for the LDA; they came down and talked to us.

THE CHAIR: Who were they?

Mr Sears: I have no idea who they were; I would not have a clue.

THE CHAIR: Who was the first person you recollect dealing with at the LDA?

Mr Sears: With Tim Xirakis and Pam Roncon.

THE CHAIR: But you had had people from the LDA approach you before you dealt with Mr Xirakis?

Mr Sears: No. The first lot of people who came down were consultants working with the LDA. They were not actually employed by them; they were just working for them.

THE CHAIR: Did they come to talk to you about acquiring the lease?

Mr Sears: First, they started talking about relocating us.

THE CHAIR: Right.

Mr Sears: Yes, that was the first thing. They showed us these big glossy brochures and all these things they had drawn up to make us feel good about it.

THE CHAIR: What were the options for relocation?

Mr Sears: There were not really any options at all. The boat business was placed where it was because of the wind. You could not really set it up anywhere else around the lake because the wind would affect it too much. That is why it was put where it was.

THE CHAIR: How is that?

Mr Sears: It is about the directions of the wind. They wanted to push it further around the lake, towards the museum, but then you would not be able to operate with the westerly winds. All the boats were man-powered. The wind would blow them towards the bridge. You would not get back. Where we were, we could keep them in around the banks and out of the breeze a bit. We had a lot of wind right through the season. That was our biggest enemy down there, the wind. It was put there because of that.

But the relocation thing, as far as I was concerned, was only a sweetener for us. They were never going to do that, never. Nothing ever eventuated. We never talked about it; they just showed us: “That is an option here; that is an option there,” but they never talked about it.

THE CHAIR: When you say they never talked about it, they did not pursue those—

Mr Sears: No.

THE CHAIR: Can you tell us about when you were approached, presumably by Mr Xirakis, to acquire the business?

Mr Sears: They did not do that at all; they wanted to just kick us out. They told me the lease was no good. So I went to my solicitor.

THE CHAIR: When were you told that the lease was not any good and they just wanted to close the business down?

Mr Sears: I really do not remember all the dates. It would have been probably 15 or 18 months before we ended up finally leaving the place.

THE CHAIR: In that period of time, did you have discussions with the bicycle hire people?

Mr Sears: Yes; we were talking all the time.

THE CHAIR: You were talking and sharing information about what one person was saying to the other?

Mr Seears: Yes.

THE CHAIR: Okay. When you had conversations with the Land Development Agency, how was it put to you?

Mr Seears: They kept telling me that there was trouble with the lease; the lease was no good. But as far as I was concerned I had a lease. I paid the stamp duty on it. They just kept telling me the lease was no good because my brother had done something wrong with the terms and conditions on his lease, which I had never seen. He did something wrong, apparently, which made my lease no good. That is all I can say. They kept telling me the lease was no good. In the end I organised a meeting with my solicitor, Tim Xirakis and the Government Solicitor. The Government Solicitor agreed at that meeting that the lease was okay and they were going to pay me out.

THE CHAIR: Who was present at that meeting?

Mr Seears: There was my solicitor—Kamy Saeedi—me, Tim Xirakis, the Government Solicitor—

THE CHAIR: Was it a representative of the Government Solicitor's office?

Mr Seears: Yes.

THE CHAIR: Or was it the Government Solicitor?

Mr Seears: I am trying to think what his name was. He lives in Braidwood. You might know him. I am not sure what his name was. He was there. There was one other person from the LDA as well. I cannot remember what his name was either.

THE CHAIR: Do you recall roughly when this was? Or precisely?

Mr Seears: It would have been probably the end of 2014, early 2015, somewhere around there.

THE CHAIR: After that meeting where you say the Government Solicitor validated the lease, essentially, what was the process from then until you came to an understanding with the government?

Mr Seears: From then, Tim Xirakis, Pamela Roncon and whoever the other fellow was, were sort of taken away from the matter. I then started dealing with David Dawes directly. But he started the same thing again, telling me the lease was no good.

MS CODY: After the meeting with the solicitors?

Mr Seears: Yes, the Government Solicitor told me they would pay me my loss of wages and the cost of all the stock I had down there. But then they all got taken off the case. I did not speak to them anymore. Then David Dawes started dealing directly

with me.

THE CHAIR: After that meeting with the Government Solicitor you did not hear from Mr Xirakis and co?

Mr Seears: No.

THE CHAIR: Did you contact the LDA or did Mr Dawes contact you?

Mr Seears: No, he rang me. His secretary rang me three or four times when I was in Sydney for quite a long period; my wife was very sick. He rang me and he kept ringing. When I eventually got back to Canberra I rang him and had a meeting with him.

THE CHAIR: So can you tell us when that was?

Mr Seears: It would have been early 2015, I think.

THE CHAIR: Because you can put it in the context of your wife being ill, when do you recall that the first approach was made by Mr Dawes to you?

Mr Seears: It would have been October 2014.

THE CHAIR: But you did not have an opportunity to get back to him until after the New Year?

Mr Seears: No, I could not. His secretary rang me, I think four times. In the end I said, "Look, I will contact you when I get back to Canberra."

MS CODY: Was the business still operating at this point?

Mr Seears: Yes. My son was doing just weekends down there.

MS CODY: Okay.

THE CHAIR: By that stage it was operating only on the weekends?

Mr Seears: Yes. I had to go to Sydney. I could not do anything. My wife was sick. My son, who was in college, used to run it on the weekends. He would look after it on the weekend for us.

THE CHAIR: So that would have impacted the cash flow?

Mr Seears: Big time, yes.

THE CHAIR: Would weekends be your big days?

Mr Seears: Yes, Saturday and Sunday. During the week we used to do not much, unless it was school holidays. It was busy in holidays but otherwise just at weekends.

MR COE: I am sorry if you have already answered this. With regard to the question of the lease and initially being told that it was problematic, and then later being told that it was all right, did you or your solicitors ever see advice or anything that suggested that it was suddenly okay? Or were you just told by the government?

Mr Sears: Yes, the Government Solicitor told us that he would recognise the lease and pay it out.

MR COE: Okay.

Mr Sears: Yes.

MR COE: Yes. And in terms of the lease that you had with your brother, were the rates and land tax passed on to you?

Mr Sears: No, I just paid monthly rent to him. It was about \$2,000 a month, just under.

MR COE: Yes, right.

Mr Sears: The last lot of rent. It used to go up every year. But the last year was about \$2,000 a month.

MR COE: Yes, right.

MS CODY: Leading on from what Mr Coe was just asking, you were paying rent every month as a business? How did the valuation for buying the business from your brother happen? And how was the rent determined?

Mr Sears: When I first bought it he just set a rent. When the lease was done it had increases in the lease every year. We had a 20-year lease. When I first bought it, I think it was \$1,500 a month. Yes, it was \$1,500 a month; it was \$18,000. Then GST started in 2000, so the GST had to be included. Then we had minor increases right through the whole time I was there.

MS CODY: And that was all agreed to in the purchase of the business?

Mr Sears: Yes.

THE CHAIR: What is it that you purchased in 1999 from your brother?

Mr Sears: Lake Burley Griffin Boat Hire it was called. I bought that business.

THE CHAIR: You bought the business, but what was included in the business?

Mr Sears: All the boats there, the little kiosk and Lake Burley Griffin Boat Hire, just the business name.

THE CHAIR: The business name; presumably the right to operate the business?

Mr Sears: Yes.

THE CHAIR: You said you paid \$90,000?

Mr Sears: Yes, \$90,000.

THE CHAIR: So what were the principal components of the value of \$90,000?

Mr Sears: I am not sure. My brother just told me that is what he wanted for it, so I paid him. Probably all the boats. I only paid for the stock and probably paid for a bit of goodwill. When he purchased it he paid around \$200,000 for it, right? But he got the lease with it, the head lease on the premises there. I did not get that; that was the difference.

THE CHAIR: So when you acquired the business, you would have presumably acquired the boats, but did you actually acquire the kiosk? Who owned the kiosk?

Mr Sears: No, we got the kiosk. That came with the business.

THE CHAIR: Yes, I know you occupied the kiosk, but did you own the kiosk?

Mr Sears: No, the ACT government owned the building.

THE CHAIR: The ACT government owned the building?

Mr Sears: Yes. That is why I had a sublease with my brother, because he had the head lease there from the ACT government.

THE CHAIR: Which included—

Mr Sears: The premises, yes. There are public toilets on top of the building. I do not know if you have ever been down there?

MS CODY: Yes, I go swimming there.

Mr Sears: Yes, the public toilets are on top and our business was in underneath. We had the kiosk where you walk in and then a big long deck right along, and all the boats were pulled up on the deck there.

THE CHAIR: Following up on Ms Cody's question, when it came to concluding and winding up the business, how did you go about valuing the business at the time?

Mr Sears: The LDA did that; I did not have anything to do with it.

THE CHAIR: You did not have a view about what the business was worth?

Mr Sears: I did, yes, but they did not listen to me. They just got three valuers down there to put their value on it.

THE CHAIR: What was your opinion about the value of the business?

Mr Sears: Well, I wanted loss of income. I was not young anymore; I was getting on a bit—60 years old—and I thought, “Well, they’re taking eight or nine years of the lease off me.” I wanted the income from that eight or nine years that I would have had the business for. That is what I valued it at.

THE CHAIR: You valued it at the income you would have received over the remaining time of the lease?

Mr Sears: That is right, yes.

MS CODY: As well as stock and—

Mr Sears: Yes, as well as the stock. That is correct.

THE CHAIR: Did you quantify the loss of income?

Mr Sears: Yes. It was about \$800,000 or \$900,000.

THE CHAIR: So about \$100,000 a year?

Mr Sears: Yes.

THE CHAIR: And did you put that figure to the LDA?

Mr Sears: I am not sure what—it might have been just verbal, all that. I do not think there was anything in writing. My accountant wrote something up originally, and I think he had \$1.7 million on it. But he said to me, “Don’t worry about that because they won’t go anywhere near that anyway.” And once that was sort of discarded, everything was verbal from there, you know? It was just me in meetings with David Dawes, mainly, talking about the value.

THE CHAIR: So when you had meetings with David Dawes, who was in the meetings?

Mr Sears: Just me and him.

THE CHAIR: Just you and him?

Mr Sears: Yes.

THE CHAIR: No record keeper? No-one with you—

Mr Sears: No.

MR COE: Were they constructive meetings? Were they civil?

Mr Sears: Yes. I went to school with David Dawes in Cooma; he was in my class at school. So we had known each other for forever. Yes, everything was quite civil. He was very cunning, though, did everything. But, yes, there was no roaring; everything

was quite amicable, yes.

THE CHAIR: How many times did you meet with Mr Dawes?

Mr Seears: Probably four; four times in his office. Maybe three.

THE CHAIR: And could you run the committee through the sorts of things you discussed and the progress you made over those three or four meetings?

Mr Seears: Well, at the first meeting he tried to tell me the lease was no good, right? And I said to him that it had been recognised by the Government Solicitors, who were working for him. I am not quite sure whether it was the first meeting. I think it might have been. We just talked about that. The first meeting was mainly about the lease, right? But, anyway, he had some other business he had to do, so the second time he made me an offer of half a million dollars. He put that in writing for me, and then I went home and talked to my wife about it. Then I went to the accountant and the accountant said, “No, that’s ridiculous; it’s worth more than that.” And then the third meeting we came to the agreement on the money that they were going to pay me, and that was it.

THE CHAIR: And what was the final agreement that you came to?

Mr Seears: \$575,000 plus GST, plus they gave me \$10,000 towards all my fees for my solicitor and accountant.

THE CHAIR: Okay. But you said in your opening remarks that they did not pay your solicitor?

Mr Seears: No, they were a lot more than that. My fees were a lot dearer than that. In the end I had to get rid of the solicitor because I was not getting paid for it, so I had to do it myself. They only offered me \$10,000 for all my fees. That was it: take it or leave it, virtually. David Dawes said to me when he put that in the letter, the \$10,000, “Disregard that. If it’s any more, I’ll pay it,” But he did not. When I asked him for it, he said, “No, that’s it. That’s what you signed up for.”

THE CHAIR: Have you got a copy of the letter?

Mr Seears: I might not. I have got a copy of the agreement we signed when we—yes. That is all. They would have all those.

THE CHAIR: What do you mean by “the agreement”?

Mr Seears: The agreement they signed when they bought the business, this purchase agreement thing. That is all, yes.

THE CHAIR: And you did not keep a copy of the correspondence with Mr Dawes?

Mr Seears: No, I do not think so. I might have it there with the other thing, the sale agreement, but I am not sure.

THE CHAIR: Could you check and get back to the committee secretary one way or the other as to whether or not you have that document?

Mr Seears: Yes. I will see if I can find it.

THE CHAIR: And if you have that document, can you provide it to the committee secretary?

Mr Seears: I will be quite honest with you, though. It was an extremely stressful part of my life and I burnt most of everything. Every bit of communications I had with the LDA and everybody else involved, I burnt everything.

THE CHAIR: Why did you do that?

Mr Seears: Because I was at the point of suicide at one stage over the way I was being treated by the LDA. I was extremely sick. My wife was in Sydney in hospital. She had a brain tumour. And they all were just laughing at me and treating me like a piece of rubbish, trying to throw me out of the business for nothing, you know? Like—

THE CHAIR: But you said the meetings you had with Mr Dawes were quite amicable?

Mr Seears: Yes, but he was still trying to tell me that I had nothing there, the sublease was no good. You know, like—

THE CHAIR: In summary—not wanting to put words into your mouth, but I am going to anyhow—you are saying that you think the LDA was trying to do you down?

Mr Seears: Of course.

THE CHAIR: But in a very polite way?

Mr Seears: That is exactly right. They are a lot smarter than me. And in the middle of all this I came back from Sydney—I think it was in December—and I had a letter there from some solicitors in Melbourne from my brother to vacate the premises because I had not paid the rent. But the rent was paid; everything was paid. Like, it did not happen, but you can imagine how I felt then—and my wife was in Sydney in hospital, you know? I had to deal with that as well, on top of the LDA trying to kick me out, you know?

MR COE: And it was the busiest time of the year for the business.

Mr Seears: That is exactly right. I was trying to get my wife back to Canberra, get things going so that I could go back to work over the Christmas holidays, which was the busiest time of the year. But, anyway, that did not happen.

THE CHAIR: So the business did not operate over—

Mr Seears: It did, but my son just ran it. He had one of his friends down there helping

him, that's all. The kiosk was virtually closed; we were just selling ice creams. So, yes, that was the last year we were there, virtually.

MR COE: I think another tragedy of all this is that there is now no boat hire business on the lake.

Mr Seears: There was a lady on the ABC radio this morning talking about the paddleboats.

MR COE: And we have now gone two or three summers.

Mr Seears: It was a very popular little business down there. Everyone loved it.

MR COE: It was iconic, really.

THE CHAIR: What happened to the boats?

Mr Seears: They are just sitting there rotting. I asked the LDA if I could operate them until they were ready to pull the place down, and I did not even get a response from them. They are just sitting there rotting. I even had people who wanted to buy all the little paddleboats and put them on dams all around the acreages, and I never got any response from them. They did not even bother ringing me. They are just sitting down there. You can go there and have a look. The place is that thick with spider webs you can hardly see the boats.

THE CHAIR: So they are basically in the—

Mr Seears: Yes, sitting in the shed there, rotting away. It is disgraceful. But, anyway, I tried my best.

THE CHAIR: When you sold the business, when you settled with the LDA for \$575,000, they acquired the boats as part of that?

Mr Seears: Yes, they bought everything.

MR COE: Sorry if we are retracing old ground, but when was the actual point in the process where it changed from being a \$50,000 or \$100,000 proposition through to the \$575,000 that you ended up with?

Mr Seears: At the second meeting when I was there, David Dawes produced a letter where he offered me \$500,000 plus \$10,000 for my expenses.

MR COE: Yes, and the catalyst for that was the letter from the Government Solicitor saying that the lease was genuine?

Mr Seears: Yes. Well, no, he had only said that in front of my solicitor. I never had any letters from him to say that. It was Tim Xirakis at the meeting with my solicitor.

MS CODY: It was just a conversation?

Mr Seears: Yes. But my solicitor was there; he heard it all. The Government Solicitor never went back on that, but he did say that that was only a sort of a starting point, you know? He did not really mean that he would pay me that money; that was only a starting point to get things going, you know? I was quite happy after that meeting, but that did not happen. What he said was going to happen did not happen, so I still had to fight them all the way to get what I got.

THE CHAIR: You said you had to fight them all the way, but you went to what appears to be the second meeting with Mr Dawes where he had a written offer for you?

Mr Seears: Yes; that is correct.

THE CHAIR: So what was the catalyst? Do you have any concept of why Mr Dawes changed his mind from, "This business has no value or perhaps \$100,000," to \$500,000?

Mr Seears: I am not quite sure, but I think he got advice from someone to say that they could not just throw me out on the street; they had to give me something. It was my whole livelihood, mine and my wife's whole livelihood. So I think somebody spoke to him. Even the Government Solicitor might have spoken to him, because I do not think he knew about the meeting. I do not think he had even discussed that with them. I think that is what might have changed his mind, when he found out all those things. Plus he had not seen my copy of the lease I had, with the Revenue Office's stamp on it. I showed that to him and I think that is what might have changed his mind.

MS CODY: And you had also brought forward your accountant's view on how much both you and he thought the business would be worth?

Mr Seears: That is correct, yes.

MS CODY: Which was \$1.7 million?

Mr Seears: Yes—no, my accountant redid it all and he worked it out to about \$1.2 million at that stage. That was when he first did it, and it was a couple of years and we were still there after all the negotiations started.

MS CODY: Okay.

THE CHAIR: How long was it between the first and second meetings with Mr Dawes?

Mr Seears: It was not very long, only a matter of weeks. Probably three or four weeks. Yes, it was not very long.

THE CHAIR: I do not think the committee has anything else at this stage, Mr Seears. You will receive a copy of the proof transcript and we ask you to review that. If there is anything in it that you think is inaccurate, be in touch with the committee to correct the record. And we have asked you to check your records to see whether you have a copy of your letter.

Mr Sears: Yes, I will have a look for that letter. Some of the dates I have told you might be incorrect because I do not remember. I did not have anything written down. But it was all within that two-year period from probably June or July 2014 until we did the settlement. But I might have some of the dates messed up; I cannot remember all those.

THE CHAIR: Thank you very much for your attendance today.

Hearing suspended from 10.22 to 11.14 am.

SWINBOURNE, MR RICHARD, Director, Capital Valuers

THE CHAIR: Welcome back to the hearings of the third day of the public accounts committee's inquiry into the Auditor-General's report in relation to certain land acquisitions by the Land Development Agency. I welcome Mr Richard Swinbourne of Capital Valuers. Mr Swinbourne, have you had an opportunity to read the pink privilege statement?

Mr Swinbourne: Yes, I have.

THE CHAIR: And you understand the implications?

Mr Swinbourne: Yes, and agree I to be bound by it.

THE CHAIR: You have been asked here as a result of your involvement with this report. Would you like to make an opening statement in relation to the report?

Mr Swinbourne: Yes, just to clarify as to whether you actually have received the reports I did for the Auditor-General.

THE CHAIR: No, we have not.

Mr Swinbourne: All right. I have reason, then, to tell you exactly what I was requested to do at some stage.

THE CHAIR: Could you outline for the committee the role you played as an expert property adviser for the Auditor-General? We will discuss that generally and then we will go to each of the blocks in question.

Mr Swinbourne: The Auditor-General supplied me with, I think, about eight reports covering the three properties. The instructions were quite specific, in three sections: firstly, to advise the Auditor-General whether the reports were valuations; secondly, to see whether the valuations complied with normal commercial standards; and, thirdly, to provide any other comments that might assist in the matter. That is pretty well what I reported.

THE CHAIR: For the benefit of the committee, can you outline your background in the area?

Mr Swinbourne: Yes. I am here as principal and Director of Capital Valuers. I am in my 47th year as a property professional in Canberra. I concentrate on specialised valuation and consultancy work in my own business. I have been valuing properties of this type and many types across the territory for many years.

THE CHAIR: So if we could sequentially go from one property to the other, beginning with the Glebe Park land, you would have received a number of documents in relation to the Glebe Park land, including the Opteon valuation?

Mr Swinbourne: That is right, yes.

THE CHAIR: And other documents that came from Colliers?

Mr Swinbourne: That is correct, yes.

THE CHAIR: That was called “valuation advice” or various forms of that.

Mr Swinbourne: Yes.

THE CHAIR: Could you run through what you received from the Auditor-General and what your response was to those documents?

Mr Swinbourne: Yes. I received the Opteon report, which was a standalone document. With regard to Colliers I received the two documents—one was valuation advice, I think, and the other one was considerations. I cannot remember the precise headings on them, but they were essentially the same document anyway. That was pretty well all I received. There were, no doubt, other documents that caused the delivery of those reports, but I was asked to have a look at those documents as standalone.

THE CHAIR: Yes. Were you also asked to provide your own professional opinion about the value of the blocks?

Mr Swinbourne: No, I did not, but in the reports I provided commentary on the process that the valuers had carried out to get to their conclusions and generally whether that seemed a reasonable approach. After weighing up both reports my advice to the Auditor-General was that the Opteon report was clearly a valuation and that it was in normal commercial terms with regard to professional standards and what would be expected in the marketplace, with a few provisos. With the Colliers reports, I did not see that they were valuations at all, so I could not really judge them on whether they were appropriate in terms of the valuations that would be provided by a valuer. So I did not need to assess those on that basis.

THE CHAIR: You said that because they were not of the sort of structure you would normally see in a valuation you therefore did not consider them valuations and did not form a view about the accuracy of the bottom line figure?

Mr Swinbourne: No, I never viewed them as valuations. They were not set out as valuations; I do not think they were ever instructed to be valuations or expected by anyone to be valuations. So in terms of whether they provided normal commercial standards of a report, I did not need to think about that because they were not valuations, in my view.

As to the Opteon report, I felt the valuer did everything that they were instructed to do. In normal circumstances it would have been usual to have regard to the potential of the land. But it was quite clear, to me anyway, that Opteon had been instructed to exclude future potential other than the current use.

THE CHAIR: Is that unusual?

Mr Swinbourne: It is a little unusual, yes. We get mixed up in Canberra because we

have our lease variation system, which requires us to do a valuation for lease variations which excludes potential, so we are quite accustomed to excluding potential in the theoretical sense. But it would be most unusual to have instructions like that for the purpose for which these valuations were required.

Having said that, Opteon qualified their report or mentioned quite clearly in the report—I think at least seven times; it might even have been more—that they were instructed to do it on that basis. So it should have been quite clear to anyone reading the report that this was a qualified report that probably was not a market value report in that it included that future potential for the land. But, as I said, it was quite clear in the report that they made that statement.

THE CHAIR: When you were reviewing these, you were doing a paper review? You did not refer back to the people who prepared the documents?

Mr Swinbourne: No, not at all. They were certainly not my instructions. I did have regard to both valuations and I made the comment to the Auditor-General that if I was asked to do a valuation for this purpose I would probably be closer to the Colliers figure than the qualified figure by Opteon. But I have not done a report.

THE CHAIR: You were not asked to do a report?

Mr Swinbourne: No.

THE CHAIR: Then you would be offering an opinion, which was a bit like the opinion that was offered by Colliers?

Mr Swinbourne: Well, except that it was a little different because I was doing the report but it was not a valuation.

THE CHAIR: In relation to the Opteon valuation, you have said that it was qualified and they were following instructions about present use.

Mr Swinbourne: Appeared to be, yes.

THE CHAIR: Are you aware of the reasons why Opteon was instructed to go down a particular path?

Mr Swinbourne: No. I was just relying on what they had done in their reports.

MS CODY: So the Auditor-General approached you and asked you to look at the documents.

Mr Swinbourne: That is right.

MS CODY: We will call them “documents” for the sake of today’s hearing.

Mr Swinbourne: Yes.

MS CODY: You determined that one document was definitely a valuation and the

other document was just a piece of written correspondence?

Mr Swinbourne: Advice, or whatever you want to call it, yes. It was not signed by anyone; it was under no-one's name. Valuations are personal to the valuer, and those documents did not have a name on them. They could have come from anywhere.

MS CODY: What is the difference in the two documents? If I was a landowner, for example, and I was given two documents like these, what would I take away from either of those documents? Would there be a right one and a wrong one?

Mr Swinbourne: A valuation report should clearly state the full process the valuer has gone through to arrive at the figure, not just figures at the end. The Colliers advice was pretty well a synopsis of just the figures, with no reason behind them. Some people say a valuation should be something where you can cover up the figure and read the report and you should be able to work out what the figure is by reading the report. That information was not provided in that Colliers advice.

MS CODY: Is that a hard and fast rule or do different valuers do different things?

Mr Swinbourne: No, there are certain standards; the Australian Property Institute provides guidance notes and standards. There are international valuation standards that guide what should be in the valuation. There is even a standard on reviewing evaluation, so it is quite specific. That Colliers advice would not be regarded as a valuation. As a piece of paper ordinarily you would not rely on it other than to take the information for what it is.

MS CODY: But if someone wanted to use the information provided to them, they could; it just would not form an actual valuation?

Mr Swinbourne: No. The actual valuation would have liability back to the valuer. There would not appear to be any liability back to anyone on those two documents.

THE CHAIR: What are the liabilities a valuer might face? What is he protected for? What is he indemnified against?

Mr Swinbourne: If you are proven to be negligent, which is an important point, then you are technically liable to the extent of the loss suffered. Valuations are something you should be able to rely on, and we pay a lot in professional indemnity insurance for that reason.

THE CHAIR: I think Mr Powderly gave evidence that his valuation advice clearly was not a valuation because it had a range, whereas a valuation has a single dollar figure. Does that mean that, in arriving at a single dollar figure, valuers tend to be conservative?

Mr Swinbourne: We get asked that question a lot. Valuers should be forward thinking as well as looking at the evidence. But, of course, if you are in a legal situation and you have more historical evidence then you tend to rely on that rather than be too forward thinking. You certainly should have regard to where the market is going, but obviously the historical evidence is the most reliable.

THE CHAIR: I have a copy of the Opteon report that was provided under freedom of information, and it is on the freedom of information website. It says that it is an amended valuation report. Do you know what the history is?

Mr Swinbourne: No, I do not.

THE CHAIR: You were only given that copy?

Mr Swinbourne: Yes.

THE CHAIR: And you only did a desktop survey, so we would have to ask the valuers themselves about that.

Mr Swinbourne: That is right, yes. I assumed that that final amended report was essentially what was being relied upon.

MS CODY: You did a desktop, paper-type audit of it. Did you offer advice about the figure in the valuation at all or was it just about the process?

Mr Swinbourne: No, it was all opinions about the report, except for the very final comment comparing the two. That was all.

THE CHAIR: Going back to that—I do not want to put words in your mouth—you had reservations about the premise on which the Opteon valuation was conducted and thought that it was constrained

Mr Swinbourne: Yes, absolutely.

THE CHAIR: Why did you have reservations about that?

Mr Swinbourne: There are probably four questions a valuer should ask when they receive instructions. The first is: who is instructing them? The second is: what are the instructions? The third is: are the instructions appropriate for the purpose? And the fourth is: who will or may rely on that advice? It is important that valuers actually look at the instructions and understand the purpose the report is going to be used for and then possibly advise the clients if those instructions are a mismatch with the purpose of the report. I do not know what was said when Opteon received instructions. Indeed, I have not seen a copy of the instructions. I was relying on what was in the report.

We get instructions from time to time where it is quite clear that that is the instruction, irrespective of the purpose, but if that question had been asked then there might have been dialogue that reinforced that the purpose needed to be on an as-is basis. It is not normal to exclude potential for another use from a valuation unless you are specifically requested to do so. As I said, they said it seven or eight times in the report so I have no doubt that that is what they were asked to do.

THE CHAIR: We then move on to your assessment of the valuations that related to the lease and the boat hire business.

Mr Swinbourne: In that case the Auditor gave me a copy of the crown lease, which is standard. They gave me a deed of surrender of the crown lease. They gave me the Herron Todd White valuation, the MMJ valuation and the Colliers International valuation. The Herron Todd White and the MMJ valuations were set out in the format that I would expect of a valuation. I have raised no particular issues. There were minor things that I would not agree with in each report, but they were not significant in the scheme of things. The Colliers report I felt had a number of anomalies in it. I think this was reported by the Auditor-General. The figure ultimately placed on the property was not proven through the report with any substance.

THE CHAIR: Going back to your analogy about putting a hand over the figure and reading it, you would have been surprised when you took your hand away?

Mr Swinbourne: Yes. That boat hire business is quite a difficult property. None of the valuers seemed to grasp the fact that it was a stratum of air with a building owned by the government around it. That is very, very unusual. To compare a block of air which is bounded on two sides by a government building, open on the other two sides but constrained by the floor of the government building and the ceiling of the government building, neither of which are part of the property, with properties generally in the marketplace is difficult.

Quite often we get air rights to value, but usually they are attached to adjoining property where an owner of one property has air rights over a street. They can be assessed, whether they are commercial or whether they have a purpose. This is quite difficult. Two of the valuers did not mention that it was air rights. One valuer mentioned that it was air rights, but I did not feel that they adequately explained that limitation.

The Colliers report I had some difficulty because of the final figure. It said how the final figure was produced but did not give any supporting evidence. There was a big difference between that report and the other two reports.

THE CHAIR: Did you come to a conclusion—I know that you were not asked to—about the value of the lease?

Mr Swinbourne: No, other than that the Herron Todd White and the MMJ valuations were argued and adequately presented and that there was no reason to believe that the figure that resulted at the end was not appropriate.

THE CHAIR: In relation to the Colliers report, you could not see their workings out?

Mr Swinbourne: No. There were a few anomalies in the report that left me a bit confused.

THE CHAIR: Okay.

MS CODY: Initially you said—about the Glebe Park valuations—that Colliers was advice rather than a valuation.

Mr Swinbourne: That is right.

MS CODY: Would you say the same about the boat hire: that Colliers was advice?

Mr Swinbourne: It says in the valuation that they provided that they were instructed to do a valuation.

MS CODY: Right.

Mr Swinbourne: So I assume that they think it is a valuation.

MS CODY: Okay.

Mr Swinbourne: It had the components you would expect to find in a valuation.

MS CODY: Okay.

THE CHAIR: So it is a document of a different character?

Mr Swinbourne: Yes, it is.

THE CHAIR: You saw no particular anomalies in the MMJ and Herron Todd White valuations, but you had concerns about the Colliers valuation. Did you come to any conclusion about the quality of the instructions?

Mr Swinbourne: All I knew about the instructions is what was repeated in the reports.

THE CHAIR: And were the instructions the same?

Mr Swinbourne: Yes. They were not clear in any of the reports. I think that was just the format of how the individual valuers did their reports. I felt that none of the instructions were particularly clear, but they were consistent to a degree and they each said why they were doing the report. They used different words but adequately said why they were doing the report.

THE CHAIR: Can you refresh the committee's memory on the timing of those three reports?

Mr Swinbourne: I will look at my notes again. The Herron Todd White valuation was inspection and assessment as at 16 April 2015; the MMJ valuation dated assessment was 29 May 2015; and the Colliers report was dated 30 November 2015.

THE CHAIR: 30 November; okay.

MS CODY: And, sorry, I know we said we had finished with Glebe Park.

THE CHAIR: Yes; that is all right.

MS CODY: Can you refresh the committee's memory about the dates of the advice and the valuation for those two?

Mr Swinbourne: The Opteon valuation was dated 7 August 2014. The Colliers advice I seem to remember was undated. Both documents are dated May 2015. There is no specific date.

MS CODY: Thank you.

THE CHAIR: Are there any more questions about the boat hire?

MS CODY: A broad question.

THE CHAIR: Yes?

MS CODY: Were you involved in any of the initial valuations that were done on either the boatshed—

Mr Swinbourne: No.

MS CODY: I assumed that was the case, but I just wanted that on record

Mr Swinbourne: Yes. No doubt.

MS CODY: Yes, so that is okay. Thank you.

THE CHAIR: Okay, for sure. So if we could move on to the bicycle hire business?

Mr Swinbourne: Sure.

THE CHAIR: You again were presented with three valuations?

Mr Swinbourne: Two valuations.

THE CHAIR: Two valuations.

Mr Swinbourne: One by MMJ and the other by HTW. In this case, I also received a valuation of the business conducted by PricewaterhouseCoopers.

THE CHAIR: That raises a question. We will go through that. I might then go back to the issue about the valuation of businesses. What was your assessment of those three valuations?

Mr Swinbourne: No particular problem. The final figures were fairly consistent. Yes, I have no particular concern with those. All three reports included a business value, but obviously the PWC one did not include a property value.

THE CHAIR: Your general assessment was that they were fit for purpose? They generally met—

Mr Swinbourne: They were. There were areas that I was not particularly comfortable with. But on the whole, as I said, the figures were consistent. They were properly

presented valuations.

THE CHAIR: What were the elements that you were not particularly comfortable with?

Mr Swinbourne: I would need to revise. The leases were concessional leases, in that they were not market value leases. This was the same for the boat hire as well. I did not think that that fact had been adequately explained in some of the reports. That might have influenced me in how I approached or how I reported it. But, as I said, several of the valuers said that because of that the land was worth nothing, which is something I agreed with. The deficiencies of a minor nature like that did not seem to affect the outcome.

THE CHAIR: I go back to the boat hire business. It would be normal, in the course of determining a valuation, to look at the prominence of the lease or the ownership of the land and to determine who owns the land and is it encumbered in some way or are there liens on it or—

Mr Swinbourne: Yes, not so much who owns the land but what security of tenure there is and what encumbrances there might be.

THE CHAIR: The fact that something was a concessional lease would be a significant encumbrance to the value of the lease, to the—

Mr Swinbourne: Of the land—yes, absolutely.

THE CHAIR: Did the valuations that looked at the boat hire business address the issue that it was sublet and that that sublease may have been illegal?

Mr Swinbourne: That was apparent from reading the reports. The valuers seemed to be doing that at a stage when that issue had been resolved. It is not absolutely clear that that was the case. Check that from the boat hire one. As I understand it, that had been resolved or the valuers had—

THE CHAIR: Before those valuations were—

Mr Swinbourne: Yes, yes.

THE CHAIR: So before April 2015?

Mr Swinbourne: That would be what I would take from the comments in the report, yes.

THE CHAIR: Going back to the bicycle hire business, you had two land and business valuations and one business valuation?

Mr Swinbourne: Yes; that is correct.

THE CHAIR: I suppose that if the view is that the land has no value then you would just—

Mr Swinbourne: The two valuers did place a value on the property—it was mainly relating to the improvements—and then carried on to say what the business might add to the property as well. In their split of land improvements generally nothing was put on the land. One valuer put a nominal amount on it, but that is all.

THE CHAIR: But that would be for the improvements? That would be the building or—

Mr Swinbourne: Done.

THE CHAIR: Or does that go with the valuation of the business?

Mr Swinbourne: No, it went with the improvements.

THE CHAIR: Okay.

Mr Swinbourne: Yes.

THE CHAIR: So in relation to the bicycle hire business, who owned the building? The business?

Mr Swinbourne: It was taken that the crown lessee, the owner, owned the building.

THE CHAIR: So its arrangement was different from—

Mr Swinbourne: They owned the building or had tenant rights in the improvements.

THE CHAIR: Yes, which was quite different from the arrangement with the boat hire business, where they owned the void under the public lease.

Mr Swinbourne: That is right, yes. There were no improvements—well, there were some minor improvements.

MS CODY: You mentioned with the bike hire valuations that there was an assessment of the business and the land?

Mr Swinbourne: Yes.

MS CODY: But there was not a valuation done of the business for the boat hire?

Mr Swinbourne: No, there was not.

MS CODY: And in your professional opinion, would you see that as a little bit strange, given that there was such a distinct issue with the whole lease and the building was owned separately?

Mr Swinbourne: No, it did not appear to me that they were asked to have any regard to that.

MS CODY: Okay.

Mr Swinbourne: Sorry, I will take that back—they did. HTW did post a value on the business and I reported back that the instructions made no specific reference to a business valuation. However, they did do one.

MS CODY: Again, in your professional opinion, was that valuation of the business side of things in the HTW valuation a fair assessment?

Mr Swinbourne: It was heavily qualified because they were pretty well only given one figure to base the value on. It is not something you would normally base any valuation on. They themselves said it was heavily qualified and probably should not be relied upon because there was just no information provided to them on the business.

MS CODY: So they did qualify that?

Mr Swinbourne: Yes.

THE CHAIR: In relation to valuations for a business, what sort of process do you go through? You have touched on the fact that Herron Todd White qualified their assessment. What would they be looking for to give an unqualified estimate of the business?

Mr Swinbourne: A good trading pattern of the business for at least three years trading, with income and expenditure; understanding how the business is operating; what assets it had to maintain; the consistency of the business. You really have to try to project that and create a set of accounts as at the date of valuation that gives you a full picture of the business. Clearly, accounts simply were not available for either of these properties.

THE CHAIR: That is probably a question for other people.

MS CODY: Yes.

THE CHAIR: That leads to follow-up questions, but not for you, Mr Swinbourne.

Mr Swinbourne: The valuers have said what they had to produce their valuation.

THE CHAIR: Was that the case with the PwC for the bike hire as well?

Mr Swinbourne: Yes; that is correct. But PwC took a more technical approach and assessed the value on two approaches: they took the limited information that was available and actually projected the cash flow of the business based on what was paid for the business quite some years ago. They also did a static valuation capitalising an estimate of the current income at the date. As I said, theirs was a bit more of a technical approach, which I preferred, of course. I could see no problem with that other than the reliability of the data that they were working on.

THE CHAIR: And that was a limitation for all of them?

Mr Swinbourne: All of them, yes.

THE CHAIR: You have done a lot of work in the ACT. Are you aware of or have you ever advised the government on the value of a business it was about to purchase?

Mr Swinbourne: Not a business, no. I stay away from business valuations.

THE CHAIR: You do not do business valuations?

Mr Swinbourne: No, and not a lot of valuers do.

MS CODY: It is mainly about land?

Mr Swinbourne: Yes.

THE CHAIR: Yes. Are you aware of the government ever having acquired a business outside of these circumstances?

Mr Swinbourne: Well, I probably have over the years, but I cannot recall any.

THE CHAIR: Do members have any further questions?

MS CODY: No, because I think it has raised more questions for later.

THE CHAIR: It raises questions but for other people. Thank you very much, Mr Swinbourne, for your attendance today. You will receive a transcript of the proceedings and you will have an opportunity to review that. If there are any corrections you would like to make, that is the opportunity to do so.

Hearing suspended from 11.51 am to 1.15 pm.

BYRNE, MS NARELLE, Manager, Commercial Valuations, Opteon Property Group

THE CHAIR: I welcome people to the afternoon of the third day of hearings in the inquiry into the Auditor-General's report on certain Land Development Agency acquisitions. This afternoon we will hear first from Ms Narelle Byrne from Opteon Property Group. Ms Byrne, have you had an opportunity to read the pink privilege sheet and are you aware of the contents of that?

Ms Byrne: Yes, I have read it and I am aware of the contents.

THE CHAIR: Ms Byrne, would you like to make an opening statement?

Ms Byrne: I would like to make a short statement. Opteon was not given an opportunity to be interviewed as part of the Auditor-General's investigation. We note that a number of questions were left within the Auditor-General's report regarding our valuation that we consider could have been easily addressed had we been interviewed. Instead, we were given the opportunity only to respond in writing to a small number of paragraphs that we were shown.

One of the questions raised was whether our valuation was undertaken in accordance with our instructions. Our instructions were to undertake a market valuation, for negotiation purposes, of block 24 section 65, city, on the assumption that there was no prospect of changes to the zoning or purpose clause. The task specification statement that accompanied our instructions asked that we take into account all terms and conditions contained within the lease and, in particular, the permitted use, purpose and gross floor area. We carried out our valuation in accordance with these instructions, making clear within the report multiple times the basis on which it had been assessed.

Under API professional standards a valuer may adopt an assumption within a valuation report as long as it is considered reasonable. Given the client's instructions that it is common in the ACT to value a property in accordance with its crown lease and as the assumption was consistent with the information that was in the public domain regarding then Minister Simon Corbell's comments that no further uses would be permitted for the site beyond those granted and that residential use would not be permitted for the site, we considered the assumption reasonable and carried out our valuation in accordance with the instructions given. We consider there to be no reason for there to have been any doubt regarding our instructions, as the instructing party would have rejected our report had it not been in accordance with the instructions given.

A second question within the Auditor-General's report was whether we should have considered compulsory acquisition within our valuation. Prior to providing a quote to the instructing party for the valuation, I asked whether they wanted a valuation in accordance with compulsory acquisition principles. Mr Xirakis responded that they did not. He said they wanted a valuation for negotiation purposes. We were very clear in undertaking the valuation that we were not in any way part of a compulsory acquisition process. It is our opinion that a number of other parties involved with the site have looked at the property through a lens of what would be considered if the valuation were for compulsory acquisition purposes.

Another aspect raised with regard to our valuation is whether it was undertaken on a highest and best-use basis. We confirm that it was. Within the context created by our instructions to assume that the lease could not be varied, we considered the range of uses permitted for the site and undertook our valuation on the basis of the highest and best use of the site, subject to the assumption instructed.

It is also our opinion that the two figures which have been compared in the Auditor-General's report and in the media should not be compared unless they were both instructed on the same basis. Our valuation has been described by a number of people as being the low valuation. However, we reject this and consider that the valuation figure was reflective of the market, given the instructions.

The Auditor-General's report noted that we provided a thorough and comprehensive report, in accordance with all required standards and guidelines. We carried out our valuation in an independent and professional manner, in accordance with the instructions and assumptions. I am willing to respond to any questions you have regarding our report.

THE CHAIR: Thank you for your thorough clarification of some of the issues raised. I will go to the issue of highest and best use and your instructions. Did you conduct the valuation or did your peer, because you are the manager?

Ms Byrne: I am the principal valuer that undertook the valuation.

THE CHAIR: Is it your signature that is on the valuation?

Ms Byrne: It is, and our report is co-signed by one of our managing directors. There were thorough discussions as part of the valuation process regarding our report. It was discussed extensively within our office between a managing director and me prior to it being provided.

THE CHAIR: So at the time you were aware of the conditions on the crown lease?

Ms Byrne: Yes, we were.

THE CHAIR: Did you consider in putting together your valuation the possibility of a variation to the crown lease or a variation to the Territory Plan for a higher use than was provided for in the lease?

Ms Byrne: Our instructions specifically required us to assume that the lease could not be varied and that there would be no changes to the zoning. A number of broader uses are listed within the CZ6 leisure and accommodation zone and a small number of uses are listed within the precinct code of the Territory Plan that have been referred to by a number of people previously within these hearings. None of those uses can be accessed without a lease variation process. Under our specific instructions to assume that the lease could not be varied, they were not a possibility for us to consider as part of our valuation.

THE CHAIR: That was simply an instruction, or did you have an understanding of

why the instructions were couched in those terms?

Ms Byrne: We understood that the client, who was the leading agency for land transactions in the ACT, had asked us to provide a valuation under very specific conditions. So on one hand there are the client's instructions. The second thing is that it is very common in the ACT to value a property in accordance with its crown lease. What are the uses it is currently permitted for? What is the value of that property on that basis? They are two elements. The third is that we were aware of the information in the public domain regarding then Minister Simon Corbell's comments that no further uses would be permitted and specifically that residential use would not be allowed for the site. That information was consistent with the assumption we were asked to prepare our report under. As such, we considered it reasonable. We carried out our report on that basis.

THE CHAIR: How did you become aware of the comments from Mr Corbell, which were made in, I think, 2011?

Ms Byrne: I had been aware of them being reported at the time. We have a strong political interest in our family and so we are often aware of information regarding different sites. It was also reported in the *Canberra Times* at one point. The North Canberra Community Council had made some reference to the comments when the car parking was being constructed in Glebe Park. There were also some references in the media after Minister Corbell had made those statements.

THE CHAIR: I go to the distinction you made; correct me if I have not got the terminology right. You were asked to prepare the valuation on the basis of a negotiation as opposed to a compulsory acquisition? What are the different characteristics that would be brought to bear on those sorts of valuations? Would you end up with a different number in those different circumstances?

Ms Byrne: Valuations for compulsory acquisition purposes are a very specific suite of valuation advice. In most cases people refer to the New South Wales legislation, which is the just terms acquisition act.

THE CHAIR: Because New South Wales does not have a constitutional requirement for just terms.

Ms Byrne: There are certain things which, through case law and over time, cannot be excluded when you are part of a compulsory acquisition process. Comments such as a minister saying that they would never allow a certain use are not enough to rule that out if you are part of a compulsory acquisition process. There are also other elements to a valuation for disturbance, special value—a number of other components that fall under that compulsory acquisition framework. We were very clear that we were not part of that process in any way.

In making the distinction about what our report meant for negotiation purposes there are a couple of elements. One relates to negotiation being any two parties in the marketplace that are looking to buy and sell the land. We do not assume it in terms of one party being the ACT government and the other being a developer; it is just any two parties. Under market value it asks us to rely on what is called a willing buyer and

a willing seller. That generally means a balance of intentions—that you do not have a very motivated seller and a reluctant buyer or the reverse. We rely on the consideration of any two parties in the marketplace: willing buyer, willing seller.

There is also a comment about them being properly informed. We are of the view that a buyer, if this site were offered to the market as at the date of our valuation, would have been aware of those comments in the public domain and they would have obviously made their own judgement about what the prospect was of getting the lease varied or anything beyond that date. But certainly they would be informed about what information was out there regarding the site.

MS CODY: In your opening statement you said the Auditor-General did not actually contact you for verbal feedback or an update on the valuation you provided as part of this particular audit.

Ms Byrne: That is correct.

MS CODY: But you were sent paragraphs to comment on? Did I hear that correctly?

Ms Byrne: Yes. Because we were referred to in some paragraphs of the report, we were provided a limited number of paragraphs and provided the opportunity to make comment on those. We did address that with a written response. However, even though our response was very clear in communicating what our instructions had been and on what basis we assessed it, those comments were left within the report. We considered that a sort of a lower right of reply than if we had been able to be interviewed personally and been able to present our position on the valuation.

MS CODY: When were you made aware the report?

Ms Byrne: We were certainly providing responses at, I believe, around October last year. I am not sure of the exact dates, but we were aware that certain people had been called to present. We had not. We then did receive notification that we would be provided with a limited number of paragraphs from the draft report, with an opportunity to provide a right of reply only.

MS CODY: This might be a little difficult for you to answer, so bear with me. Do you feel that you were misrepresented? That may not be the correct terminology here. Did you feel that, by the time you got an opportunity to comment on the draft report, you were not given adequate opportunity? Sorry; I am not trying to put words in your mouth.

Ms Byrne: I think that would be accurate. We feel that through the period of time, since the media has been reporting on this for a number of years now, there have been some misconceptions regarding our report. Some comments were left in the Auditor-General's report that talked about our apparent instructions—"Did they value it on the highest and best use?"—which we feel we could have very easily explained. As I said in my opening statement, we had a written letter of instruction. We had a task specification statement which asked us to pay specific attention to the purpose clause that permitted GFA things on the site. Then our report very clearly stated that we were asked to assess the property on that basis and clearly stated the assumption

we were instructed to rely on.

So for there to have been any doubt left in the report—references to apparent instructions; if we had valued it on this basis—was a little bit frustrating. It was very clear what circumstances we were valuing the property under. We do not believe that any reader of our report has been in any way unsure about the basis it was valued on. The same thing goes for the compulsory acquisition comments. There were a couple of references to whether Opteon should have considered compulsory acquisition. Well, we did. We asked at the very start, prior to even giving a quote, because it is a far more complex valuation than the market value—

MS CODY: The standard is.

Ms Byrne: We had considered that right at the start. We had got a definitive answer. We were very clear that we were not part of a compulsory acquisition process. When people have been talking about the fair value and making comments about the compulsory acquisitions terminology, there should not be any confusion—our report was not prepared under a compulsory acquisition process.

MS CODY: Have you listened to any of the evidence given today already?

Ms Byrne: Yes, I have.

MS CODY: Yes. So you are aware that we had someone in before you.

Ms Byrne: Richard Swinbourne.

MS CODY: You are aware of his comments?

Ms Byrne: Yes.

MS CODY: Mr Swinbourne quite clearly stated to us that he felt that your valuation was—although he personally had a couple of queries; he did not necessarily reject the premise of it—a valuation in the truest of terms and he felt that it was quite clearly stated in your valuation.

Ms Byrne: Yes.

MS CODY: And you feel that maybe the Auditor-General did not necessarily have that same opinion?

Ms Byrne: I did hear his comments. He described it as a thorough report and said it was in accordance with standards et cetera. I suppose what I am referring to is this: there were a couple of references within the Auditor-General's report that questioned whether these were our instructions. They were our instructions. Again, there were comments saying, "Should they have considered compulsory acquisition?" We feel that that reflected, in some way, on our professionalism, because, yes, we did. We could have clearly answered that, yes, we had; we approached the instructing party; we clarified that. We do not feel it should have been left within the report, with a question regarding our valuation because it just was not applicable.

THE CHAIR: Under the act people who are mentioned get a right of reply and you exercised your right of reply under the act. Did you see the result of that in the Auditor-General's report—a change, any change, a little bit of a change, a substantial change—in the paragraphs that related to Opteon?

Ms Byrne: We saw no change at all.

THE CHAIR: You saw no change?

Ms Byrne: Yes.

THE CHAIR: In relation to the negotiations that you had with the LDA, who was instructing you at the LDA?

Ms Byrne: We were instructed by Mr Xirakis. I clarify that we were not a party to the negotiation process and we were not consulting or advising the LDA.

THE CHAIR: No, I mean the negotiation over the terms of the valuation.

Ms Byrne: Yes, Mr Xirakis.

THE CHAIR: You were asked to provide a valuation. There is a process that you go through where you clarify with the client, you provide a quote and the quote is accepted. You were dealing with Mr Xirakis from the LDA. Is that done in writing? Is it done verbally, face to face, over the phone or is it a combination of those things? Do you have a paper trail that substantiates it, because the LDA does not seem to?

Ms Byrne: It is done on a number of bases. The first thing is our formal instructions.

THE CHAIR: That would be in writing?

Ms Byrne: Yes. Formal instructions in writing; a task specification statement in writing—and I have the signed copy. We also had a preliminary briefing with Mr Xirakis at the LDA. There were phone conversations and things that followed up. We have a series of file notes which reference what was discussed at certain meetings and through the process. I make very clear that our task specification statement asked us to have particular regard to the purpose clause and permitted GFA of the site. We were very clear about what our instructions were.

THE CHAIR: You raised the issue about your looking at this in terms of compulsory acquisition. Was that documented?

Ms Byrne: It formed the initial part of our discussions around the job itself. No, it was not specifically documented at that point, prior to discussing what the quote would be. I do have file notes referring to discussions that happened after we were engaged for the job, when I had raised with them whether the million dollars in landscaping and works had been undertaken and had just said that there may be opportunities under surrender of the lease in certain clauses within the relevant legislation. That is referred to within our report.

One of our assumptions was that an assessment of the value of the lease under the Planning and Development Act 2007, sections 293 and 294, which relate to termination of lease et cetera, is outside the scope of the instructions given. That is on page 6 of our report. We considered a number of different aspects of legislation that we felt may have applied to the site. Compulsory acquisition we had dealt with before we had even accepted the job. We had looked at surrender of the lease. We had looked at whether the lease was on a concessional basis as well. We stand by the fact that we provided a very thorough report regarding this property.

THE CHAIR: Could I ask about the valuation report? The copy that I received, which is on the FOI website, is entitled “Amended valuation report”. It says the date of the report reissue was 25 August 2014. Was there a previous copy?

Ms Byrne: There was.

THE CHAIR: Yes.

Ms Byrne: In the original report, when we commenced the process to do the valuation, our search of the crown lease showed a lease which had “concessional” stamped on the front. On that basis our original report said, “It appears that this site may be a concessional lease.” It said, “If it is found to be a market value lease, the report should be returned to the valuer for review and, if necessary, amendment.” It was subsequently found to be a market value lease and so we amended our report and that is the copy that you have seen.

THE CHAIR: Okay, great. Thank you for clarifying that.

MS CODY: Can I just ask a question that you may or may not be able to answer?

Ms Byrne: Okay.

MS CODY: If your instructions were broader and you were able to value the land taking into account the possibility of lease variation, would you assume that there would be a different valuation attached? I know it is a hypothetical question, but bear with me. I am relying on your expertise.

Ms Byrne: Yes. I make very clear that the only basis on which we have assessed the report is in accordance with our instructions, and they were very specific, okay?

MS CODY: Absolutely, yes.

Ms Byrne: In the broader sense—and I would not like to comment on other figures—if lease variation was permitted you could look at a range of other uses. But I would like to make clear that highest and best use is one of the key elements that a valuer relies on when assessing a market value. If you will bear with me, I will read the definition:

Market value is based on the highest and best use of the asset that may or may not be the existing use. Highest and best use is the most probable use of a

property which is physically possible, appropriately justified, legally permissible, financially feasible, and which results in the highest value of the property being valued.

So there are a number of elements within there.

In terms of your question, Ms Cody, I would like to focus on one element, which is the “most probable use”. The Oxford dictionary describes that as “likely to happen or be the case”. I would be hard pressed today, sitting here three years since my valuation, to still be saying that residential use is the most probable use of that site. I stand by the fact that we have only assessed the property on the basis of the valuation that we did. That element of what is the most probable use of the site is critical in terms of the information that was in the public domain regarding the site. But it also goes to the fact of whether any willing buyer would consider the prospects of getting a lease variation through.

If you compare it to sites where no statements have been made that absolutely no further uses would be permitted, in my opinion you would adopt a higher level of risk to factor into your report for the chance that a lease variation may not or is unlikely to be approved for a particular site where some of this information is in the public domain.

THE CHAIR: Thank you, Ms Byrne. Is there anything else you would like to sum up if you think there is something we have not covered?

Ms Byrne: It is not something we have not covered, but I would like to stress that our valuation figure has been compared with others publicly and we would really like to stress that valuations can be instructed on a very specific basis. We consider our valuation to be accurate in terms of the instructions we were given. We find the continued comparison of the two figures to be quite unhelpful when they were not assessed under the same instructions.

THE CHAIR: I think you have had an opportunity today to put your firm’s point of view on the public record. There will be a transcript available early next week, which will be sent to you. If there is anything that you feel needs to be modified or corrected you will have an opportunity to do that. Thank you very much for your attendance today.

HEATON, MR TIMOTHY, formerly of MMJ Valuers

THE CHAIR: I welcome Mr Heaton to the third day of hearings into the Auditor-General's report in relation to certain Land Development Agency acquisitions. Have you had an opportunity to look at the pink privilege statement?

Mr Heaton: No, I have not.

THE CHAIR: Have a look through that and let us know whether you understand the privilege considerations.

Mr Heaton: Yes, I have read them and understand them.

THE CHAIR: Thank you. Mr Heaton, you were with MMJ Valuers and you have now moved on?

Mr Heaton: Moved on, yes.

THE CHAIR: Do you have any general opening comments to make?

Mr Heaton: I was engaged by the LDA to provide valuation services on the two noted properties, Mr Spokes and Dobel Boat Hire. I have moved on from my previous firm, so I have limited access to all information. I have had a chance to make a brief review, but I will try to answer questions to the best of my ability from recollection and obviously from a brief review of the documentation.

THE CHAIR: What do you do now?

Mr Heaton: I am still a valuer; I have just changed firms.

THE CHAIR: Was your firm or were you specifically as a player in your firm commissioned to undertake the valuations on the boat hire and the bicycle hire businesses? Was it a commission to your firm or a commission to you?

Mr Heaton: The firm was on the panel. I was elected as one of the valuers on the panel. So whether it was me personally or the firm, I—

THE CHAIR: It ended up on your desk?

Mr Heaton: It ended up on my desk, yes. Correspondence was to me.

THE CHAIR: They both ended up on your desk?

Mr Heaton: Yes.

THE CHAIR: Could you take us through, to the best of your recollection, the process you went through in relation to the valuation? Who approached you from the LDA? What communication was there to establish the parameters of the valuation? What was the process you went through for the valuation, beginning with the boat hire company?

Mr Heaton: I think the initial approach came through for both initially. I believe, from memory, it was actually a phone call from Pam Roncon. Obviously there was a discussion about what we needed to do and what they were trying to do, to understand exactly what we had to quote on and whether we had the capability and level of skill to provide that personal service. Obviously then an instruction was sent. I believe the instruction was signed off by Richard Hutch.

THE CHAIR: From the LDA?

Mr Heaton: From the LDA.

THE CHAIR: Is that the normal approach, that there would be a telephone communication followed up by written instructions?

Mr Heaton: There is a conversation, initial engagement: “Do you wish to quote on this? Is this your ability?” Obviously then you provide quotes as to what your cost will be for service. They look through them, see what is value for money, see what they are going to get and then they nominate from their end who they wish to do the job and they send an instruction out.

THE CHAIR: And then they send out an instruction?

Mr Heaton: An instruction, a formal instruction.

THE CHAIR: What is normally included in that formal instruction?

Mr Heaton: What they require to value and, obviously, identification of the premises.

THE CHAIR: Would that include the purpose for which they want the valuation?

Mr Heaton: Yes, I believe it does. The instructions should be summarised or appear as a statement in my report essentially.

THE CHAIR: When you got those instructions from the LDA that was in relation to both the valuations?

Mr Heaton: From memory, I believe it was for engagement on both.

THE CHAIR: From your memory, were there other communications to clarify any points before you started the process?

Mr Heaton: That is right. There is usually an open line of communication with the instructing party. A lot of it is verbal, on the phone: “This is what we intend to do. Is this how you perceive it, how you have written the instruction?” and getting to understand the instruction correctly.

THE CHAIR: Then you conducted the valuation of the properties. Beginning with the boat hire, were you aware of the status of the lease?

Mr Heaton: Yes.

THE CHAIR: And what was your understanding of the status of the lease?

Mr Heaton: It was concessional. There was market rent in place and my understanding was that they did not have a sale of interest, as in the crown lease, because obviously it was concessional.

THE CHAIR: So would that be best described as a licence to operate?

Mr Heaton: A licence to operate. So in this instance they pay rent and they can occupy the premises for that period of time. Then it is a matter of whether that agreement or that crown lease is renewed.

THE CHAIR: And the licence to occupy had a number of years to run, seven or nine years or something?

Mr Heaton: Yes, in that range. One was about eight or something, from memory.

THE CHAIR: In a sense, your valuation of the land was nil or close to nil?

Mr Heaton: For the boat hire?

THE CHAIR: Yes, for the boat hire.

Mr Heaton: For the boat hire we made a hypothetical assessment on the land because in the marketplace that land would not be saleable. I think it was a stratum parcel.

THE CHAIR: Can you explain what that is?

Mr Heaton: It is usually a parcel of land which does not have a direct or full connection to ground—below ground or something like that.

THE CHAIR: A sort of valuation of the air space?

Mr Heaton: Yes, air space or subterranean space, or now they can even register them as “rights at ground”, which limits you to the ground. When we spoke to them I said, “Well, what’s the value of the land?” When we were going through our initial instruction I said, “Well, I believe there is no saleable amount on the land.” But we did provide a lessor and lessee apportionment in our report.

The lessor, being the territory, owned an interest in the land as the crown lessor. Hypothetically, if the owners had an interest in the land or salvage in the land this is where the balance would be for them. But that was heavily qualified, and that was provided just for information purposes. When we were talking to them I said, “Well, do you want this? It is not really a basis to be relied upon” They said, “Oh, no, it would be good to see what that is.” And that is why it is in the report.

THE CHAIR: In relation to the boat hire you made an assessment about the value of the business?

Mr Heaton: I did, yes.

THE CHAIR: What terms did you use to make an assessment of the value of the business?

Mr Heaton: We were not provided with very good information on the business and it was hard to get access to see the business.

THE CHAIR: What period of time are we talking about for this? This was April 2015?

Mr Heaton: It will be on the front of the report.

THE CHAIR: May 2015.

Mr Heaton: Yes. I believe limited information was provided and, in the end, after discussion of the various means, we adopted a figure provided by them, which is heavily qualified.

THE CHAIR: Provided by whom?

Mr Heaton: I assume by the owners of the business.

THE CHAIR: But you did not receive it directly from the business?

Mr Heaton: No, I did not.

THE CHAIR: Who did you receive it from?

Mr Heaton: I assume it would have been received back through the LDA.

MS CODY: So the LDA provided you with the information?

Mr Heaton: I believe so, from my recollection.

THE CHAIR: You made an assessment based on the information provided to you, probably by the LDA. Did you make an assessment about the value of the business in light of the apparent illegal sublease between the head lessee and the operator?

Mr Heaton: It was brought up in various conversations and meetings. When we reviewed the crown lease and looked at the purpose clause and looked through the various clauses, there was a clause saying that you could not sublease the crown lease. That was brought up and clarified. I think it is noted in my report that we looked at it on the basis that there was one entity there and this is what the revenue was that they were going to achieve. We worked off that basis.

THE CHAIR: For the purposes of your report, you treated it as if there was not a sublease?

Mr Heaton: Was not a sublease, yes.

THE CHAIR: And did you have discussions with the LDA about how to handle that issue before you came to that conclusion that you would treat it as if it were not subleased?

Mr Heaton: Yes, because it was raised that there were two interests in the property, and it was: “No, there is essentially only one interest legally in the property.” And in discussions the report assumption was that we would just assume there was one legal entity and this is the projection of income that they would achieve.

THE CHAIR: Who were you dealing with at the LDA?

Mr Heaton: It was generally with the instructing party, Richard Hutch, and Pam. There were meetings in that period to discuss what direction this should take, based on the lack of information available and obviously the awkwardness of the task.

THE CHAIR: That process of ongoing discussions about the valuation while the valuation is happening, is that unusual or usual?

Mr Heaton: It is not discussing the figure; it is discussing to make sure that we receive the information that we need. We received the information and it required further clarification and more detail. So it is more to make sure that we are adhering to the instruction and that we have the correct information.

THE CHAIR: So it is a bit more complex than doing a valuation for a sale of a residential mortgage or something like that.

Mr Heaton: Business evaluations take a lot more of an in-depth look. You should be provided with financials so that you can see trends and changes and certain aspects of the financials. In that instance, we did not have the ability to do that. But, either way, your valuation and the task are reliant on the quality of information provided or that you can obtain.

THE CHAIR: In finalising this report did you feel comfortable with the figure that you came to?

Mr Heaton: Essentially the report is addressed as a report and assessment because we did not address it in the end as being a number we could 100 per cent rely upon. We did not have the background on the financials and we could not say whether they were normalised or achievable or whether they were actually what was being achieved.

THE CHAIR: So it does not say it is a valuation report; it is a report and assessment. So that means something different in property terms, does it, from a valuation report?

Mr Heaton: A valuation is fully qualified, with information that has been fully verified. Not all the information could be or was verified under the task.

THE CHAIR: So, because of that, this is not really a valuation report?

Mr Heaton: Not in the context of if we had had the full information. Otherwise we would have done detail on the incomes and normalised them.

THE CHAIR: But the valuation in relation to the land, would you consider that a valuation?

Mr Heaton: As to the issue of the land, they did not have a saleable interest in the land.

THE CHAIR: But you did an assessment of the value of the land?

Mr Heaton: The land, and it was a hypothetical assessment as to whether they had a legal right to the rental or the land, and obviously it was for information purposes if it was felt that that was an amount deemed payable.

MS CODY: So, to clarify, you only had discussions with staff from the Land Development Agency and did not ever speak to the leaseholder at that time or the business owner?

Mr Heaton: I spoke to the business owner because he had to let me into the business. We had discussions about what he had there. He walked me through the property, explained what was there. That was obviously part of the business assessment or valuation. I asked him certain questions about trading hours, what parts of the year the business traded. It was obvious that it was probably a seasonal trading business. We went through, briefly, what his business make-up was and what was attached to the business.

MS CODY: That obviously assisted in forming your assessment of the business value?

Mr Heaton: There was not a lot of detail conveyed between me and the business owner at that time, so what we took out of that was very limited.

MS CODY: I am not sure if you heard some of the earlier testimony today by Mr Swinbourne?

Mr Heaton: Yes.

MS CODY: He also spoke about “air space”—he called it—and you called it?

Mr Heaton: Stratum parcel.

MS CODY: I am assuming they are the same?

Mr Heaton: Oneness or likeness.

MS CODY: You assessed that as part of this report?

Mr Heaton: The crown lease is essentially concessional. We made a hypothetical assessment of that space. Obviously if it was put to the market it would not really be a

sale interest, from my understanding.

THE CHAIR: What involvement did you have with the Auditor-General during the compilation of her report?

Mr Heaton: I had no involvement at all.

THE CHAIR: Were you with MMJ at the time of the writing?

Mr Heaton: No, I was not with them. MMJ obviously spoke to me and said that these documents needed to be made publicly available.

THE CHAIR: You had moved on from MMJ.

Mr Heaton: I had already gone at that stage.

THE CHAIR: This may be a question for MMJ rather than you. You had no direct conversation with the Auditor-General during the compilation of her report. Were you given an opportunity to comment on any of the content of the report under the Auditor-General Act?

Mr Heaton: Through MMJ. They obviously advised that this was happening. They asked whether anything was in the report that should be removed, obviously under the conditions. I was given that opportunity.

THE CHAIR: You were given that opportunity. So MMJ was given that opportunity, which they also passed on to you.

Mr Heaton: I believe so. I cannot speak for them directly. In the context I was advised and—

THE CHAIR: So did you see certain paragraphs of the report in its draft form?

Mr Heaton: I had the file.

THE CHAIR: No, the Auditor-General's report. Did you see certain paragraphs of the Auditor-General's report when it was still in draft form?

Mr Heaton: The Auditor-General's report?

THE CHAIR: Yes.

Mr Heaton: This document here?

THE CHAIR: Yes.

Mr Heaton: I do not believe so, no.

THE CHAIR: That is probably a question for MMJ. Thank you very much for that. Have members got any other questions about the boat hire?

MS CODY: No, but I do have a follow-up on your last question.

THE CHAIR: Yes, sure.

MS CODY: So the report was your report.

Mr Heaton: It is my report, my sign off, yes.

MS CODY: It was provided to the Land Development Agency in May 2015, we determined. How long after that did you leave MMJ, approximately? It does not have to be exact.

Mr Heaton: I think I would have left at the start of the next year, the start of 2016.

MS CODY: Thank you.

THE CHAIR: I think we might have exhausted the boat hire. We can go to the bicycle hire. You provided a report in September. I have some dates here. Let us not go down there; that relates to three separate reports on the boat hire. So on the bicycle hire, you were asked at roughly the same time to provide a valuation on—

Mr Heaton: From my recollection, yes. I believe there was an instruction that had both components together. That is from my recollection.

THE CHAIR: You went through roughly the same process. The individuals from the LDA were commissioning this valuation with the same people.

Mr Heaton: The same people, yes.

THE CHAIR: You went through the same process: phone call, “Are you interested?” “Yes, we are.” Backwards and forwards.

Mr Heaton: Yes.

THE CHAIR: Then a request to tender?

Mr Heaton: To undertake the task.

THE CHAIR: To undertake the task. There are standard questions?

Mr Heaton: Repeat the question, sorry.

THE CHAIR: There are essentially standard questions so that you can ascertain the scope of works.

Mr Heaton: Yes. It is basically specific to the property. We identify the property. We do our cursory view that anyone in this room can do, to understand what it is.

THE CHAIR: Look on Mapi or Google maps.

Mr Heaton: Yes, Google it. See what it actually is, get an understanding of it and then ask the appropriate questions.

THE CHAIR: And you were contracted to provide this report. Were you aware that there were other reports on the land?

Mr Heaton: I was aware that they were engaging other parties.

THE CHAIR: And that applied to the boat hire as well?

Mr Heaton: The boat hire, yes.

THE CHAIR: So you were aware that other people had been in this place already. Did you encounter any particular difficulties in this process in relation to the bike hire? You said it was difficult.

Mr Heaton: We had difficulty getting access to the premises.

THE CHAIR: Why is that?

Mr Heaton: I understand that there might have been some friction. I am not sure. We had issues getting suitable financials as well. This is highly critical and important when assessing a business. It is very intimate, especially with businesses of that specialised nature. So it was essentially similar issues that were carried through for both tasks.

THE CHAIR: What conclusions did you come to about the nature of the lease in relation to the bicycle hire? It is a concessional lease?

Mr Heaton: It was of a similar nature.

THE CHAIR: Similar nature.

Mr Heaton: Similar nature but they did have, from memory, the right to get compensation for the built improvements.

THE CHAIR: So they owned the office, the building?

Mr Heaton: Hypothetically, yes, they were entitled to get compensation, I believe, on termination of the lease.

THE CHAIR: You again came to the conclusion that there was only a notional value of the land?

Mr Heaton: Of the land, yes.

THE CHAIR: Did you do the same process that you described before, where you attributed a portion value according to your rights to the land?

Mr Heaton: That is right.

THE CHAIR: The territory had a larger right.

Mr Heaton: Initially we did two reports: one report on Dobel Boat Hire and one for Mr Spokes. We later did an update report for Mr Spokes, which is on the public register, I understand, where there was further clarification. The hypothetical lessee apportionment was removed and the reason we re-engaged was that we got a better set of financials. We could then make a bit of an educated judgment on where that business was at.

THE CHAIR: This report, which is dated 29 September 2015, is the updated one or the first one?

Mr Heaton: 29 September is the most recent.

THE CHAIR: When was the previous one?

Mr Heaton: It is dated May.

THE CHAIR: When you were asked to look at and value the land, were you asked to look at its current lease purposes or were you asked to look at highest and best use, or what?

Mr Heaton: It was making a fair and just offer to the lessee. We looked at it as it was.

THE CHAIR: As it was.

Mr Heaton: As it was, based on the concessional.

THE CHAIR: Did anyone raise with you the prospect of compulsory acquisition?

Mr Heaton: We raised that, but they said, "At this stage we just want to get an understanding of where the fair value would lie."

THE CHAIR: We heard from the previous witness from Opteon that, had they been asked to consider compulsory acquisition, there would have been different criteria and they would have come up with a different number. Would you agree with that?

Mr Heaton: There would have probably been a series of different adjustments to the report. But then it depends on Dobel Boat Hire, how it was instructed, the follow-up instruction, and also the issue with the sublease. There would have needed to be clear instruction again on how to modify that as well. But the business value would have been the business value based on the information provided. It just depends on what other areas would have been attributed under the act.

THE CHAIR: But you specifically raised this with the LDA and they specifically ruled it out at the time?

Mr Heaton: At that stage, yes.

MS CODY: I think you already answered this question and I apologise; I heard you answer it, but it did not register.

Mr Heaton: I might answer it better this time.

MS CODY: I note that you said you were aware that other people were looking at the boat hire. But were you aware that other valuers were looking at the bike business?

Mr Heaton: Yes. Only when we started getting to the task, and it was to try to organise the inspections and do them in one go and not disrupt the people running their businesses, but that did not eventuate. We ended up all doing separate inspections.

MS CODY: That leads me to my next question: do you generally talk to other valuers to get a sense of whether they have more pertinent information than you? Does that happen?

Mr Heaton: No, not in this instance because all the information was coming back through the LDA, so presumably everybody was getting the same information. We assumed we were all getting fed the same stuff.

MS CODY: From memory, three valuations were done on the bike hire property and three were definitely done on the boat hire. I am not sure if you are aware of this: one of the valuations done on the bike shop was required to only evaluate the business side of things. One of our earlier witnesses was saying that when you value a business there are different criteria and different rules to when you are valuing land. You were chosen off the panel, you said.

Mr Heaton: I believe there is a panel, yes.

MS CODY: So you would have the skill sets to value both business and land.

Mr Heaton: Yes.

MS CODY: Having had a bit of experience with panel stuff, it was MMJ that were chosen from the panel or you for MMJ?

Mr Heaton: I cannot be sure, but the conversation was had with me.

THE CHAIR: Were you on the panel?

Mr Heaton: I believe so, because I was the director of valuations.

THE CHAIR: So you were the nominated person on the panel, not the firm. Sorry, I am just getting my head around who was on the panel. Is it MMJ as the firm or the person who holds the position of director of valuations for the firm?

Mr Heaton: I probably cannot answer that fully.

MS CODY: I know panels are a bit interesting, that is all.

Mr Heaton: I assume the panel was in place at that time too. It is a very structured panel now.

MS CODY: Soon after your final report was handed down, you left MMJ?

Mr Heaton: It would be six months, five or six months.

MS CODY: So were you aware of the Auditor-General's report into these land acquisitions? Did you have any opportunities to comment on her report on the bike hire? I know you said you did not necessarily have comments on the boat hire, but is that the same for the bike business valuations?

Mr Heaton: Yes. If we are talking about commenting on the Auditor-General's report that was published, I do not believe I had an opportunity to comment on that.

THE CHAIR: How long have you had experience in valuing in the ACT?

Mr Heaton: Probably seven years.

THE CHAIR: Have you been aware of the territory acquiring other businesses apart from these two businesses?

Mr Heaton: No, I have not been involved in the territory acquiring other businesses.

THE CHAIR: Are you aware of the territory acquiring businesses?

Mr Heaton: I am aware that the territory has done exercises on such things but has not gone through to acquiring the assets.

MS CODY: Have you been involved in other local, state or federal government acquisitions of businesses?

Mr Heaton: No. Actually, I apologise; I am involved in something similar at the moment where I am working for a government entity outside of the ACT. Full disclosure.

MS CODY: Sorry, I did not mean to pry.

Mr Heaton: No, that is all right.

THE CHAIR: A couple of the things we have come across have raised questions that we will probably have to direct to MMJ. Mr Heaton, is there anything you think we may not have covered that you might like to cover while you are under privilege?

Mr Heaton: No. I think you have requested everything you need to know. I have answered the best I can.

THE CHAIR: Thank you very much, and thank you for your attendance today. You

will receive a copy of the proof *Hansard* of today's hearing. If there is anything you feel you need to correct, there is a process for doing that.

The committee adjourned at 2.16 pm.